

# Data Protection Ireland

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## Headlines:

- Ireland to follow suit in police home hacking? p.14
- Firms urged to delete data, p.15
- Taoiseach takes Commissioner to court, p.15
- Help to avoid cyber-attacks, p.16

## Inside this issue:

Editorial	2
New series: How to...stay out of the news	3
Whistleblower hotlines and data protection	6
Data security — compliance and controls	11
DPO survey — the results	13
News & Views	14

## Government: lets ban spam

Organisations that send unsolicited emails and text messages now face fines of up to €250,000 or losing 10% of their turnover due to the introduction of new anti spam legislation.

The Department of Communications, Energy and Natural Resources, has approved new laws that, for the first time in Ireland, make unsolicited mail for direct marketing purposes an indictable offence. Until now, offenders were prosecuted in the District Court where the maximum fine was €3,000.

Although it is reported that the majority of email spam received in Ireland

emanates from organisations outside the country, the new legislation strengthens the power of the Office of the Data Protection Commissioner (‘ODPC’) in addressing the growing problem of unsolicited text messages being sent from within the Republic. The ODPC received 390 complaints last year about ‘spam’, most commonly in the form of unsolicited text messages.

The recent prosecution by the ODPC of Clarion Marketing Limited for sending unsolicited text messages, is indicative of the stance that will be taken by the Data Protection Commissioner, Billy Hawkes, in the

enforcement of the new legislation. Clarion was fined €2,000. The Commissioner has said:

*“I want to take this opportunity to remind persons engaged in direct marketing activities that my Office continues to pay close attention to the whole area of unsolicited communications. I want, in particular, to send a message to all involved in business to familiarise themselves with the law which applies to unsolicited communications for direct marketing purposes.”*

A copy of Mr Hawkes’ press release is available from his website, [www.dataprotection.ie](http://www.dataprotection.ie)

## High Court says Commissioner need not attempt amicable resolution

The High Court has ruled that the Data Protection Commissioner was not required to attempt to resolve complaints against Realm Communications Ltd before prosecuting the company.

Rob Corbet of Arthur Cox, who represented the Commissioner in this action, told *Data Protection Ireland*:

*“the judgement confirms that while the Commissioner is required to investigate all complaints*

*(unless they are frivolous or vexatious), there is nothing in the DPA which inhibits the capacity to prosecute whether on foot of a complaint or otherwise.*

*“In practical terms, the judgement enables the Commissioner to proceed with the 60 prosecutions being taken against Realm which were adjourned pending the outcome of this case.”*

The complaints to the Commissioner emanated

from mobile phone users who had received unsolicited marketing texts from Realm, offering a free stay in one of 30 Irish Hotels.

The anti-spam provisions of Regulation 13 of the Privacy in Telecoms Regulations, which transpose in Ireland the Communications Data Protection Directive (2002/58), ban the sending of unsolicited messages for the purpose of direct

*(Continued on page 14)*