

Will POPI become a dirty word for marketers?



By [Steve Ferguson](#)

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The Protection of Personal Information Act No. 4 of 2013 (POPI) was signed into law in November. It comes at a time when marketing has just entered the promised land of customer profiling, behavioural advertising, big data, and multiple marketing channels.



(Image: Wikimedia Commons)

The volume and quality of personal information available out there is unprecedented. And with more and more prospective customers using social media and other online tools, it just keeps getting better for marketers.

Consumers also stand to benefit from new sophisticated marketing methods. More and better products and services, tailored to their individual tastes and preferences. Marketing messages that are relevant, timely, and responsive.

Many commentators have said that the premium to be paid in this new information-laden marketplace is privacy. As people freely share more and more information about themselves and their lives on Facebook, Twitter and personal blogs, surely their expectations of privacy need to change?

Fundamental

But privacy, like freedom, is fundamental to our happiness as human beings. It helps us carve out a space away from the hustle and bustle of modern living, where we can have relationships, develop weird and wonderful interests, and express points of view without exposure, interference or censure.

The right to privacy is often difficult to define. We react strongly to media reports about tabloids tapping phones or US government agencies monitoring our online activity, without really understanding why and where the real harm resides for us.

Privacy is often confused with secrecy. The argument being that when we freely expose our personal or private information, we give up the right to have that information protected against further exposure or use.

But that theory of privacy is no longer viable. To participate in modern life effectively, we have to share information about ourselves with others. Instead of looking for secrecy, we want to retain some level of control over what our information is used for and by whom.

The legal rights and protection we want are threefold: firstly we want to be able to share our information without giving up control over it; secondly we want others to process our information fairly, reasonably and securely; and thirdly, we want to have recourse against them when they don't.

Rights are not absolute

At the same time, we can't expect these rights to be absolute. They need to be balanced against our collective interest in allowing information, including personal information, to flow freely so we can all reap the benefits of the modern economy.

With the introduction of POPI, the legislature appears to have got this balancing act right. Following best practice from countries in the EU, Australia and Canada who have established privacy laws, we now have a law in SA which covers most of the bases, with the rest intended to be filled in by more specific regulations and industry codes.

Coming off the back of the Consumer Protection Act, POPI could be seen as yet another hurdle for the sales and marketing departments. It will no doubt bring its fair share of red tape and compliance is going to require some proactive effort. But if the ultimate objective of the new law is kept in mind - creating a market where people feel safe and secure to share their personal information with companies and organisations that can be trusted with it - the benefits far outweigh the costs.

ABOUT STEVE FERGUSON

Steve Ferguson is an attorney who specialises in the field of intellectual property and IT law. Steve has been involved in the tech and media industries since 2003 and has helped a number of exciting businesses, including Bizcommunity, navigate the legal issues facing them in the digital age.

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