

How can data theft be tackled in India?

(By Latha R Nair, Partner, K&S Partners, New Delhi, in the Economic Times of October 13, 2006)

Indian BPOs perhaps account for one of the largest back office operations for global businesses. Although these BPO operations involve large chunks of personal data of foreign nationals, India does not have a specific data protection law to assure safety of such data transferred to BPOs. Currently these operations are carried out through executed contracts between BPOs and foreign companies. Despite such contracts with stringent provisions, data thefts are not uncommon in India. To curb this, the government has recently proposed to amend the Information Technology Act, 2000 (the current ecommerce law) to include data protection provisions.

Can a separate, stringent data protection law tackle data thefts without affecting e-commerce? Or should we amend the IT Act? Europe has separate ecommerce and data protection laws. A data protection law should have two objectives: protection of personal data and, at the same time, facilitation of its free movement for business transactions. Hence, ecommerce is only one aspect of data protection law. Ecommerce legislation ideally should cover all aspects of ecommerce such as obligations of service providers, electronic contracts, electronic business transactions etc. Hence, while all data transfers are ecommerce transactions, all ecommerce transactions are neither data transfers nor fall within the purview of a data protection law. Europe's ecommerce law, which was enacted after its data protection law has a specific provision excluding from its purview issues of ecommerce already covered by the data protection law.

It would be a good idea for India to emulate Europe. India should, therefore, abandon the proposal to include data protection provisions in the IT Act and instead, enact a specific data protection law a la the European one. Current fears in industry that a stringent data protection law could threaten a flourishing ecommerce are unfounded since legislations always come with checks and balances. Such a step would not only assure safety of data with Indian BPOs but also enhance comfort levels of foreign investors with BPOs.