PERSONAL DATA AND DIRECT MARKETING - Coase Theorem on EU Directive 95/46/EC

Tobias Edberg

The right to personal data is compared with the right to land. The concept of rights may be regarded as bundles of rights of which the right to use of scarce resources, the right to exclude and the right transfer rights are the most important ones. The development of Information Technology has reduced considerably the cost of using personal data leading to an increased use of the data in the context of direct marketing by different firms. However, the use and processing of personal data may cause externalities, both positive and negative ones, on the individual to whom the data relates.

This situation can be analysed with the Coase Theorem, where the transaction costs have important function. In a state of zero transaction costs the parties, firms and individuals, can make agreements of an optimal use of the personal data, independently of the assignments of rights to the personal data. Such agreements internalise further the externalities. However, in the real life the transaction costs are high meaning that the assignments of rights are most significant leading to that the externalities remain. To pass by the problem of transaction costs and externalities, zoning procedure with transference of rights can be used.

The background of bundles of right to personal data together with the Coase Theorem and zoning procedure are applied to the Directive 95/46/EC adopted by the European Union regarding the processing of personal data and the protection of privacy. This Directive may however be interpreted in different ways leading to that the assignment of rights and level of direct marketing is different between Member States.

Keyword
Personal Data, Bundles of Rights, Direct Marketing, Send Outs, Externalities, Privacy, crowding effect, sorting cost, Coase Theorem, Zoning, Information Broker, Consent
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- Coase Theorem on EU Directive 95/46/EC

By
Tobias Edberg

University of Linköping
Summary

The development of the information technology (IT) has lead to considerably reduced cost of processing of personal data in different contexts. This development makes personal data collected by public authorities profitable for the process for direct marketing. The public personal data are used as input in the firms’ address register in the production of send outs. From these registers target groups and potential clients are sorted out to whom offers about products and services can be addressed. At the same time as firms and individuals are benefited by direct marketing and sorting process, there may exist other individuals that are caused nuisance and externalities in form of invaded privacy and crowding letter boxes.

The European Union (EU) has recognised these characteristics of the IT and adopted in 1995 a Directive regarding the processing of personal data. The Directive, denoted 95/46/EC, concerns the lawful processing of data and the protection of the individual's right to freedom and privacy. Further on, the objective of the Directive is also to harmonise the Member States' national laws and eliminate barriers. I have in this thesis tried to discern the provisions concerning the processing of personal data in direct marketing and the protection of such processing.

The purpose of this thesis is to analyse these provisions within the frame of the discipline Law and Economics, and the Coase Theorem. Further on, it is also to interpret the provisions of the Directive and their effects.

The right to personal data compared with the property right to land. With this background the issues are analysed within the Coase theorem, where firm's use of personal data in the production of send outs affects the individuals subject to the processing. Solutions are studied, both from a state with zero transaction costs and when such cost are significant. High transaction costs often result in the need of regulations, as zoning, where transferable rights are important in order to have both the benefits of the direct marketing and to protect the individual's right to freedom and privacy.

The result of the analysis is that the paradigm of Law and Economics, and the Coase Theorem are much suitable for studies of this kind of issues. The interpretation of the provisions leads further to the conclusion that the EU has tried to protect the privacy, sustain economic development, and harmonise the national laws. However, due to margins of manoeuvre and lack of understanding of transaction costs, the objectives of the Directive are not fulfilled in an optimal way.
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APPENDIX 1
1. Introduction

1.1 Background

Changes of information technology (IT) and the integration process of the European Union (EU) have had profound impact on the use of personal data. The development of IT has lead to that the cost of processing of personal data has decreased considerably, specially for those data collected and administrated by the States and public authorities. Private firms and organisations are processing public personal data as input of their making of address register. These registers are then used to find target groups to whom send outs are directed in purpose of marketing different products and services. Such direct marketing may have both positive and negative effects on those individuals subject to the processing. The negative parts are invasion of the individuals’ privacy and crowded letterboxes, which in some cases can be compensated by the reduced cost of finding products and services they need and desire.

The EU has in its integration process recognised the characteristics of the new IT and adopted in 1995 a Directive, denoted 95/46/EC, in purpose of regulating the use of personal data and the protection of privacy of such processing. The Directive tries to eliminate the barriers that hinder dissemination of personal data between the Member States and to harmonising the national laws regarding the protection of the privacy. The Directive contains some interesting provisions and issues concerning the use of personal data in direct marketing. I have tried to discern these provisions in order to examine and discussing them.

- The Directive was adopted with a twofold purpose. First, to protect the individuals right to freedom and the right to privacy. Second, such protection must however not restrict the purpose of free flow of personal data between Member States and firms. There is thus a conflict between the level of protection and the level of use and processing.

- The Directive provides that consent must be given in order to make processing of an individual’s personal data lawful. However, there are some cases where such consent is not necessary as when a contract must be fulfilled or when a performance carried out in public interest. Further on, may other parties have legitimate interest in the personal data if the use of such data does not invade in the individual’s privacy. Legitimate interest can be the use of personal data in direct marketing but this is up to Member States to decide
• Lawful processing of data must further on be adequate, relevant and not excessive in relation to the original purpose. However, such it is not clear how excessive the changes of the purpose of the processing can be. Some Member States has interpreted these provisions rather freely and other Member States more restrictively. The interesting issue is whether or not the personal data collected by State, official authorities or by other parties are allowed to be used and process for purposes as direct marketing.

• In those cases the personal data are disclosed to other parties in purpose of direct marketing, the individuals has the right to be informed about the possibilities to object and block the data. The Member States may choose whether to inform the individuals about the right to object at the time of disclosure of the personal data to third parties or to inform the individuals of such rights in other ways. However, if it proves impossible or would involves disproportionate efforts this obligation may be passed by.

• The Directive distinguishes two kinds of personal data. First, there are those personal data that may be used in direct marketing without a direct consent. The Directive defines, further on, kinds of data too sensitive to be disclosed for the purpose of direct marketing. Such data concern, for example, the individuals religious belief, political opinions or sexual habits and may only be processed in commercial context if the individual explicitly gives his consent. However, there may be occasions when these data are used by associations or other non-profit-organisations. These parties are not allowed to disclose these kinds of data without permission. Despite this there exit possibilities to use these kinds of data indirectly for marketing products and services, for example, through magazines and member papers.

• The EU states with the Directive that the Member States must create a Supervisor Authority that control the processing of the personal data, and if necessary establishes more precise provisions concerning, for example direct marketing. This authority is further on endowed with power to ban illegal processing but cannot hinder that data used in unwanted situations or facilitate for those individuals interested in direct marketing.
1.2 Purpose

The issues of the use of personal data and the individual's right to privacy have often been treated in context of morality, philosophy or politics. This thesis aims to view these kinds of issues from a quite different perspective, concerning furthermost the discipline Law and Economics. The main purposes are threefold:

- to apply the Coase Theorem on the issues raised above;
- to show the usefulness of the paradigm of Law and Economics;
- to try to clear out the interpretations of the EU-Directive with respect of direct marketing.

1.3 Method and Theory

This thesis will use an approach that has been first practised by Camilla Holmén in her thesis of licentiate from 1993. The right of information in general and the right to personal data in particular is compared with the property right of land. An important concept in this context is that property is regarded as bundles of rights. Of these rights the use of scarce resources, exclusion and transference are considered the most important ones.

With this background, personal data will be treated within the Coase Theorem which considers in this context the commercial use of the personal data. Firms use personal data to select potential clients to whom send outs are directed. In a state of zero transaction costs firms and individuals are able to make agreements in purpose of restricting or expanding the use of personal data in direct marketing. Such agreements will internalise external effects and thus creates a Pareto optimal level. However, with the existence of transaction costs agreement will not be concluded which leads to a suboptimal level with too little or too much a use of personal data. This suboptimal level of use leads either to negative external effects of the individual or of the firm, depending to whom the rights are assigned. To solve the problem of external effects, the government can use regulations and zoning. The process of zoning divides the area of interest into different parts where the assignments of rights are different.

A large part of the literature to this study has been found on Internet, but they can also be found in an ordinary library. The reasons to use these kinds of sources are mostly of convenience instead of borrowing and bringing home all literature. There is thus a risk that the literature may be distorted or not true. Some of the Internet sources used admit also these risks. Further on, those sources used are all official ones, which hopefully leads to more trustworthy information.
1.4 Delimitation

This thesis will regard mostly those parts of the EU-directive that concerns personal data in Direct Marketing. However, some other part will also considered when the theory is analysed.

There may have come other EC-laws after the mentioned Directive that brings up some issues concerning direct marketing. However, these do not contain anything about the processing of personal data and the consequences of direct marketing and thus are not for interest being analysed in this thesis.

Implications regarding the quality of the information will not be regarded in this thesis. This means those important issues of incorrect, distorted and non-up-to-date information is neglected.

1.5 Definitions of Terms

There might be some terms and concepts that may cause the readers question or thoughts. This makes it appropriate to gather them in specific sections. The terms are furthermore based on both the Directive (Article 2) and the Holmén (1993).

Public personal data are data gathered and processed by authorities in their ordinary activities. Such data can be disclosed freely or are sold in different forms (on paper, via Internet or other computerised forms). Personal data are also made public when firms sell data to other firms. Public personal data are further on used as inputs in production of registers in purpose of direct marketing.

Direct Marketing are send outs from firms to individuals. The send outs may contain everything from occasional offers to catalogue of the seller’s assortments. The send outs are addressed to specific groups (target groups) which depend on selection from register. Further on, the term direct marketing will include marketing from the ordinary mail, or by E-mail, telephone or fax (see SOU 1997:19, p. 364).

Processing are those operations which are performed upon the personal data, whether or not these occur by automatic means. Examples are collection, gathering, use, disclosure by transmission, dissemination, combination, and blocking.

Register means any structured set of personal data which are accessible according to specific criteria. These registers may be of different kinds and in the context of direct marketing are the address register the most common. The address registers are used by the firms to make the sorting process and reduce the sorting cost.
Sorting Costs are those costs that arise when a seller (firm that uses direct marketing) is identifying potential buyers, or when buyers tries to identify interesting goods, services or sellers. Since search costs will be used in other context in this study, the term sorting costs has been chosen in the purpose of avoiding confusions.

Information zones is here defined as the amount of accessible information for certain activity or for certain group of users. Examples of personal data that the firm has right to use as selection criteria for direct marketing are addresses, family situation and income. Other information zone may include those personal data considered sensitive, and thus prohibited against processing.

Consents and Objections are methods of admitting or restricting process of personal data. Consent is an explicit expression that may or may not be in written form allowing, inter alia, firms to process data. However, in some occasion indirect consent is given, making processing permitted without the individuals direct admission. Example of indirect consent is when parties' interest is balanced, as in the issue of direct marketing.

1.6 Outline of the Thesis

Chapter two examines first the theory of property rights and how the right to information and personal data compared with the right to land. With this background the use of personal data in direct marketing is analysed and the concept of externalities, both positive and negative, are of importance in this context.

Chapter three describes the Coase Theorem and how to internalise the externalities, both when the transaction costs both are zero and high. To overcome the problem of transaction costs that hinder voluntary agreements between the firms and the individuals, a system of transferable zones is further developed.

Chapter four interprets the EU Directive 95/46/EC in general and the provisions concerning direct marketing in particular. Since the Directive leaves margin of manoeuvre and possibilities to choose between alternatives, the interpretation and application between the Member States can be different. Two Member States - Sweden and Italy - will be used as example.

Chapter five analyses the provisions of the Directive 95/46/EC with respect to the models presented in chapter two and three.

Chapter six contains the conclusion of the purposes stated, concerning the use of Coase Theorem, the frame of Laws and economics, and the analysis of the Directive.
2. The Use of Personal Data
To understand the issue of direct marketing and personal data I will try to analyse the right to the data in the perspective of the right to land. In section 2.1 there will be a short comparison between the two rights and why they are needed. The necessity of redefining them due to scarcities caused by development of technologies will also be analysed. Section 2.2 will examine the driving forces to use the personal data in direct marketing and the external effects of such use.

2.1 Property Rights to Personal Data – Bundles of Rights
Information is often seen by economists as a public goods. However, there is nothing unique about the public characteristic of the information and parallels can be made between the right to information and the right to land. If the public land is not overpopulated, one individual’s use will not exclude other individuals’ uses in the same extent. However, when the land is populated to the extent that the individual’s use subtracts other individuals’ use, the resources have become scarce. Scarce resources and lack of rights, as in case of common property, may lead to an overuse of the land resulting in conflicts and inefficiency of the land use\(^1\). This situation is often called the tragedy of the commons or the 1/n problem (Holmén 1993; Skogh & Lane 1993)

One method to overcome the problem of exhaustion of scarce recourses is to specify property rights to them. Specification of property rights to land or information often implies that the resources are scarce\(^2\) (Holmén 1993). Property rights can be seen as three-element bundle of rights each separated for the others. The rights are (i) the use of scarce resources, (ii) the exclusion and (ii) the transference of rights to others. (Demsetz 1998. p. 145; Ostrom 1997). The right to use concerns how and which investment will be made. Examples can be which crop will be used or what kinds of animals to be raised. With the right of exclusion, the individuals has the right to determine who will have access to the property and who’s access is restricted or barred. If specifications of rights may contribute to improved economising of

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\(^1\) Example of the tragedy of the commons can be the hunting of fur-bearing forest animals. If the single hunter does not bear all the cost and not consider other hunters there will be risk of overhunting. This specially if the animals stock does not grow in the same rate as the stock is hunted (see Skogh 1977; Demstz 1998).

\(^2\) Scarce resources of information is not as obvious as with lands. When the information is produced it can often be uses or disseminated in unlimited extent without being exhausted, i.e. the marginal cost of the use is zero (Holmén 1993). Stiegler (1980) states, however, that dissemination in many cases may be costly and that it is much cheaper to produce the information anew rather than to disseminate the existing information.
resources, transference of rights will give additional possibilities to increase the welfare by exchange and trade, and thus specialisation and job sharing. With the transference of property right sellers may lease or sell the exclusion rights to others on the market. Further on, property right system that does not contain this right of transference is not considered well-defined. Such system is regarded as fundamental part of the private property. (Ostrom 1997; Holmén 1993)

Patent letter and copyright are two examples of exclusive and transferable rights of information. These kinds of property rights to information are motivated to protect and to create the incentive for investments of the production. The patent system gives firms the possibility to acquire the profits of research and development. The system gives also the legal right to use the information and exclude other to copy and sell the information to other. It is first with the possibility to exclude and to transfer rights that the producer of the information has the incentive to disseminate or sell information to others. (Holmén 1993)

Technological developments and appearance of new markets leads often to new scarcities and thus needs of new or redefined rights. Such changes may create both positive and negative effects on the surrounding environment. New technology can make it profitable to use resources that earlier where too costly or even physically impossible to use. The appearance of new markets can further on lead to considerable increase of the value and use of the specific resource. Free access of these new resources leads to increased externalities motivating introduction of new rights in purpose of internalising of the these effects. Whether the internalisation will come about or not depends, however, on that the profits of such internalisation exceeds the cost of it, i.e. the cost of specifications and maintaining the rights. (Holmén 1993)

This approach can also be applied on the use of personal data. The IT has lead to considerable decrease of the cost of process and disseminate personal data. With the new technical possibility it has become profitable to use already existed public data. This has lead to the appearance of new markets of the personal data, of one is the market of direct marketing. Firms use public personal data as input in their production of address/data register in the purpose of finding customers of interest to their products or services.

The development has made the cost of processing and dissemination close to negligible. This has made the personal data to public goods since one user does not subtract the others to use the same data. However, the processing may cause increased cost in other
places and a serious complication can be the invasion of individual's privacy and overcrowded letterboxes. If the firms do not consider these effects externalities will arise.

2.2 External Effects

The development of IT has made the use of public personal data profitable in many areas. The firms are now able to buy or collect personal data from many different sources, both public and private ones. Technological changes create also the needs for new or redefined right to the personal data. If such rights do not exist there will not exist any restriction of the firms' use of such data. This situation may be compared with the tragedy of the commons and the problem of overuse. However, as mentioned above, it is not the personal data that have become scarce. Instead, the use will cause costs and externalities in other forms for the individuals. Those externalities may be both positive and negative. Before describing and illustrating the situation with absence of property rights to the personal data, there will be closer examination of why the firms use personal data and which externalities such use may cause the individuals.

2.2.1 The Positive Effect of Reduced Sorting Costs

The driving force that makes the firms to use personal data in direct marketing is the possibility to reduce the cost of finding potential customers, i.e. the cost of the sorting process\(^3\). In this process the personal data are collected, processed and compiled in order to create different kinds of address register, which are then used by the firms to sort and select target groups to whom direct marketing may be directed. The personal data are often collected or bought from public authorities (sometimes also from firms and organisations) as input in the production of address register. Personal data are gathered by the public authorities in their ordinary activities and are sometimes disseminated or sold to other parties to be used for other purposes\(^4\). These public data may comprise personal data about age, income, education, and car possession etc. The firms do not often find all the interesting personal data from the same source but have to contact many different kinds. The new and changed addresses can be found

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\(^3\) The term sorting process and the sorting cost will be used here as the cost of searching/finding customers. The traditional definition of this cost are search cost. However, the traditional definition will be used in its traditional sense further in the thesis. Therefore the need for a new definition (see also Holmén 1993)

\(^4\) When the public authorities disclose and sell data to the firms they often charge a price. This authority price is different in different countries and Member States.
in the official address register and data on car possession can be collected from the official car register. In similar ways can data about income and education be found. Other kinds of data may be bought from a more private source such as book clubs, sport clubs and in extreme cases from religious organisations, trade unions, political parties, and pornographic magazines etc. Example of normal and quite innocent sorting process may be the search of customers to an advanced expensive CD-player for car use. The firms in search of the right target group may sort out all men between 30 and 55 years old, with high level of income driving BMW cars. Sorting process for more extreme target group can be the search for customers of a special pornographic magazine directed to Catholic homosexuals that also are Communists. These kinds of sorting process are however regulated in many countries since the data used are often regarded as sensitive leading to invasion of people’s privacy. Such effects will be discussed further in the next paragraph.

It is not only the firms that are interested in reduced sorting cost. There are also many individuals interested in reduced cost in purpose of easily finding products and services they desire. The individuals’ methods are perhaps less sophisticated but they may also take use of the new IT to actively search and find potential sellers on Internet for example. This active process together with personal data that are disclosed by the individuals to firms’ address registers is most probably reducing the sorting cost for them.

How much resources will be invested by the firms on the sorting process and on the production of address register depend on how much they will gain in reaching a carefully selected target group. An optimal sorting is when the marginal cost of the sorting process equals the expected increase in income that is a result of the process. Holmén states, however, that the higher investment in resources to find potential customers (or sellers) the higher will the probability be to find the interested buyer (or seller). Further on, the facts that the buyers and the sellers change continuously on the market makes the sorting process and customer identification even more valuable. (Holmén 1993)

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5 Mostly “rich” men are interested in advanced and costly CD-players. The age limitation may restrict those men that are uninterested or too poor. BMW is just an example of an expensive car.
6 The individual may use Internet in both active and passive ways. The active way is when he searches for sellers that have the product or service he desires. The passive way is when he discloses his personal data to different sellers on Internet, which then mail different direct marketing to the e-mail address (see Genborg, GP, 2000).
7 The marginal cost would be here the price of the personal data and the cost of their own processing.
The sorting process is the base for the send out that the firms use to direct offers of products or services to the potential customers. The kinds of send outs range from a very little use of personal data to a considerable amount of such data in the sorting process. One extreme kind is the leaflet in which only the sellers are identified, except when geographical restrictions are used. Leaflets are used furthermore by firms that have their potential customers spread out evenly among the population, or when the clients are living in a very restricted area, for example, residential area close to a supermarket.

Firms that, however, sell very specific products with few potential customers among the population would hardly use leaflets. They use instead considerable amount of personal data in the sorting process in order to select the target groups to whom direct marketing may be addressed. It can be concluded that the fewer potential buyers are in relation to the population in a certain region the higher will the sorting cost be.

Sellers with high sorting cost can use different ways of marketing their products. The firms may use the normal mail system but the new IT gives also the possibility to use the e-mail addresses. Direct marketing send by e-mail has the advantage to be cheaper for the firms since they save both the cost of printing and mailing (Genborg, GP, 2000). E-mail is probably much faster which also saves time not only to the seller but also to the buyer. Other ways of marketing could be buying commercial space in specialised or professional magazines. In this more indirect way the use of personal data may be passed by, but gives also the possibility to marketing products or services that may be considered sensitive or even offensive.

The sorting process and the send outs are in general paid by the firms. However, the single buyer will also be interested to be included in the production of address register if he is benefited by the reduced sorting cost. Further on, the fact that the firms pay for the send outs does not mean that they bear all the costs. In the end may the whole cost of the identification or part of it be passed on to the customer through the price of the product. (Holmén 1993)

2.2.2 Nuisance of Direct Marketing - Invasion of the Privacy and the Crowding Effect.

The use of personal data in direct marketing may cause some negative effects on the individuals. There are two different kinds of nuisance that the individuals may feel. First, that their privacy is invaded, and second that they are crowded with send outs which may lead to
that the benefits of sorting cost disappear. These two kinds of nuisance will be examined separately and thereafter discussed together.

The individual's interest in privacy regards two aspects. The first is his right to have privacy and his need of autonomy and freedom from control. The second aspect concerns the contents of his privacy, i.e. those facts and data that are embarrassing or discrediting for the individual. (Holmén 1993)

Most individuals are interested to avoid surveillance and invasion of what the individual considers his private sphere. This is valid independently if the disclosure of personal data leads to unwanted invasion of the privacy due to discrediting or embarrassing information or data. This kind of interest may exist also when the individual receives too much send outs that hinder the autonomy and freedom from control. This may be valid even if the data used are addressed and telephone numbers, which hardly can be considered sensitive and discrediting. Some individuals may in the extreme consider all kinds of letters, e-mails or telephone calls in purpose of direct marketing as invasion his privacy. However, the extent of the invasion differs clearly and in many cases the invasion may be considered only as minimal. There are economists that criticise this aspect and ask why the right to privacy has among scholars priority to other kinds of goods including economic ones. Other aspects such as wealth may contribute to personal autonomy in same extent by giving the individual the possibility to plan his life and the means execute his decisions (See Kronman 1980, p. 747-748). The send outs may further on restrict the individual's privacy in other ways. The send outs demand attention to be read or at least observed which affects the time the individuals can spend on other activities.

The other aspect of privacy concerns the individual's interest in concealing or at least deciding what kind of information that is to be disclosed. The reason for this is that disclosure of some kind of information may cause the individual harmful or costly effects. Discrediting or embarrassing data may lead to disadvantages for the individual in certain situations concerning, for example, employment, studies, bank loans etc. However, this aspect depends to a great extent on the kind of direct marketing. Unless the send outs contain offensive or annoying material, they will only in this aspect cause minimal costs and little negative effects. But if the send outs have offensive and discrediting information, as when personal data are concerning sexual habits, political opinions or personal health, the individual will probably have the risk to be caused a great deal of nuisance. Discussing this aspect some might wonder why embarrassing personal data in direct marketing ever cause the individuals nuisance. Kronman (1980) asked himself why some people ever feel embarrassed
when their interest are revealed to others who share the same interest. His conclusion was that such information may awaken feelings of shame and guilt when others people knowing is a reminder of what one wishes to forget. Alternatively, is the fear that sensitive facts will be disclosed to someone that is unsympathetic or disapproving leading to, for example, harassment. In some case direct marketing may also cause anger, when the individual feels offended by firms interested in making profits of his or relatives health. Examples of this kind of direct marketing can be send outs that ask to raise money for Cancer Funds to individuals who had a relative that is recently deceased from the very same problem.

The other kind of negative external effect mentioned earlier, is a kind of crowding effect that also is affecting the individuals time and attention. This effect is regarded in this study as the cost that directs marketing cause when the send outs are placed in the letterbox (or mailbox when the send outs are e-mail). The crowding effect is an expression of limited rationalism of apprehending or grasping the different kinds of information in the send outs. If the individual is overburden by different offers of which the majority are without any interest the crowding effect will probably arise. With a high level of send outs it will take time and other resources to find information of interest. Probably some interesting information will disappear in the crowd and even be thrown away if the individual decides that he has no time or lust to read the offers. The Crowding effect and the nuisance of invaded privacy may, further on affect each other inversely. A more precise sorting process may cause stronger feelings of invaded privacy, but also reduce the negative crowding effect. This since the need of the send outs will be less when the firms are able to find their potential clients more easily.

2.2.3 The Effect of Absent Right to Personal data

The technological development was mentioned earlier to lead to new kinds of scarcities and thus the need of redefined rights. Before discussing how the rights to personal data adapt to such development I will examine the situation when there does not exist any defined property rights at all. Without property right the personal data may be considered as common property. This situation may be compared with the tragedy of the commons where the parties do not consider the full social cost of their activities. Firms in the production of address register and send outs will use public personal data as input to the extent that the marginal cost of the last input is equal to the marginal income of increased sales that the send outs generates. This level of production is socially wasteful since the social marginal cost exceeds the social marginal income (Libecap 1998). This problem of overuse of personal data can be described graphically with the diagram 2.1 below.
The firm's income of send outs depends on how much sales they will generate. The marginal income is the sale stimulated by the last unit of the send outs. The graph marginal net income (MNI) represents this income subtracted by the marginal cost of the send outs. Marginal income is equal to the marginal cost (MC) where the graph MNI crosses the X-axis. The X-axis represents the send outs directed to the firm’s target group with offers about the product or services. The processing of personal send outs have two mentioned effects, the positive one with reduced sorting costs, and the negative one with invasion of the individual's privacy/crowding effects. The graph marginal net damage (MND) represent these two effects, where the positive effects overweigh the negative ones below the X-axis up to XZ. Above the axis after XZ, the negative effects are dominating since the protection of the privacy is considered more important than the reduced sorting costs. With the absence of defined property right to personal data there is nothing that restricts that firms’ use them in the address to the extent where MI is equal MC, i.e. up to the level X0 in the diagram. This level of production will exceed the socially optimal one since the firms do not consider the full social cost (invasion of the privacy and the crowding effect) of their register production. Further on, without considering the nuisance of the production, the invasion of the privacy must be regarded as a negative external effect. However, when the rights adapt to the scarcities and become specified the situation change. Coase observed in his famous article form 1960 the situation on how one party's use or activity created nuisance to others.
3. Coase Theorem and Transaction Costs

Coase observations were later on developed into the Coase Theorem, which explains the situation of one producing party’s external effects on other parties. Coase assumed that the problem of transaction cost could be solved as long as the property rights were well-defined and the transaction costs were close to zero. Cases without defined rights, as the one mentioned above, falls outside solution due to the lack of possibility to create contract of transferring and redistributing property rights to the personal data. A structure without such defined rights creates too high transaction costs of defining and exchanging them, especially when it concerns common-property resources. (Libecap 1998) Before examine the problem from Coase's perspective there is a need for describing the transaction cost that are so important to his analyses.

The transaction costs include all the costs of negotiations and establishing contracts of transference of property rights. Here it is also included the costs of specifications and maintenance of the right. The total transaction costs are often divided into three main parts; (i) the search cost, (ii) the contract cost and (iii) the monitoring cost. The search cost includes the cost of finding an opposite party and the cost of obtaining information about prices, conditions and qualities. In the contract cost the cost of negotiations and establishing are included. The monitoring cost is a consequence of the risk that the opposite party does not accomplish the agreement made. There exists, further on, a relationship between the different kinds of transaction costs. The search cost, for example, comprises the cost of finding a trustworthy and controllable party. More elaborated contract (high contract cost) leads to more controllable agreements (low monitoring cost). (Holmén 1993)

8 The classical example used by Coase is the cattle raiser and the farmer, which are neighbours. The cattle raiser is interested to raise his cattle stock until his marginal revenue is equal his marginal cost. In the absence of fences that bar out the cattle from the farmer’s field, the increased stock will cause nuisance to the farmer’s production. This Theorem may be extended to many other areas with other kinds of parties, such as a fabric causing nuisance to a neighbouring residential area. Coase criticised with the article the at time accepted analyses of the problem represented by Pigou and suggested other kinds of solution than the recommended pigou-taxes.

9 The search and creation of the perfect contract is however in vain. The nature of the contract will always be imperfect and incomplete and the main reason for this is the high cost of writing the more perfect contracts. It would cost too much to foresee and cover all possibly variables. This problem can be solved by a perfect judge instead which interpret the imperfect contract in desirable manners. Further on, incomplete contracts may benefits the parties in other ways, when the opportunity to renegotiate may often furnish ways for the parties to alter the terms if new circumstances arise (see Shawell 1998, p 438)
Coase assumed that the external effects exist due to the transaction costs. If contract of transference of property rights could be established without any transaction costs the effects would be internalised leading to elimination of both the externality and the inefficiency. The central theme of the Coase Theorem was the importance of well-defined property rights. Whenever such rights are established it does not matter how the rights are initially assigned whenever transaction costs are zero. This depends on that the parties with zero transaction cost are able to negotiate towards a pareto-optimal contract in which all the parties internalise the external effects. (Skogh & Lane 1993; Holmén 1993) However, when the transaction costs becomes high the possibilities of negotiations fail to come of, leading to that assignment of the right becomes most significant. To better explain the Coase Theorem and apply it on the direct marketing it may be appropriate to use example and illustrate them with a diagram. To begin with the cases of zero transaction cost will be studied, first with the right assigned first to firm and then to the individual. Thereafter will the assumption of zero transaction costs be dropped and the two cases of assignment are studied again.

3.1 Zero Transaction Costs

3.1.1 The Right is Assigned to the Firms

When the property rights to the personal data are assigned to the firms, they have access to all public personal data. They have also the right to buy samples from other firms and sell from their own register. This means that the individuals will not have any legal right to their data disclosed to the authorities and the firms. Neither are they able to hinder that the firms sell these data further on and that the data are joint processed with other public and/or private register. As with the example of absent property right the firms are expected to use the input to the extent that the marginal cost of the last input is equal to the marginal income to the same input. The firm’s cost is assumed to be the cost of the transfer of the data from the public authorities to the firm’s own register. The income depends on how much the sorting cost will be reduced due to access to cheap persona data. Finally, personal data are furthermore use by firms that act on markets with relatively high sorting costs.
What are then the consequences for the individual of the firm's uses of personal data? With the assumption of free access to personal data for the firms the result is at the beginning similar to the case with absent property right to the data. The firms optimising their use the personal data until the extent they maximise their income. The individuals are as earlier caused nuisance by the firms' use when they feel their privacy invaded or feel the crowding effect. This situation may be described in diagram 3.1, which is an elaborated version of diagram 2.1.

**Diagram 3.1 Describes the situation of the firms' use of personal data and the individuals nuisance of such use**

When the firms are maximising their income the production of send outs will be at the level of \(X_0\). This level of send outs raises marginal net damages for the individuals, which corresponds to the area of ecd in the diagram. At the same time that some individuals consider these effects negatively there may be others that regard the use in a more positive way. Along the graph MND the individuals value the effects of the send outs and for all individuals left of \(X_Z\) the positive effects with reduced sorting costs outweigh the possible nuisance.
Those individuals that value the use negatively (right of $X_Z$) are interested to compensate the firms to reduce the production of send outs. However, the reduction of the production will only be to $X_1$ since levels beyond that require compensation above that the individuals are willingly to pay. The size of the compensation paid will be within the area acd and depends on the parties' strength to negotiate\(^\text{10}\). The conclusion with the well-defined right to personal data and zero transaction costs is the individuals are able to negotiate and transfer the right to themselves up to the socially efficient level. Thus, despite that the right is assigned to the firms they will consider all the revenues and cost of their decisions. The agreement leads to that the negative external effects become internalised. The people may feel negative effects notwithstanding but these are not external ones.

Finally, it may be appropriate consider that the conflict of interest does not only exist between the external parties. Both the firm and the individual are interested to reduce the sorting cost and to minimise the nuisance of the direct marketing. The latter for the firm, to what extent such nuisance is shown in a low response to the direct marketing. From the firm's view it is hardly of any interest to spend money on send outs directed to individuals not interested in its product. However, the individual in most cases is interested in some kind of direct marketing, but uninterested in other kinds. The main conflict is therefor that the individuals are interested in both reduced sorting cost and to avoid direct marketing that causes nuisance and invades the individuals' privacy. (Holmén 1993)

### 3.1.2 The Right is Assigned to the Individuals

What are the consequences when the right to the personal data is assigned to the individuals instead? In this case the individuals has complete control of the firms' access and use of the public personal data. As mentioned above both parties are interested to reduce the sorting costs and with the assumption of zero transaction costs the parties are able to reach an agreement about the use of the data.

When the individuals accept that the firms use the public personal data as input in their address register, the firms pay the authority price for them. However, there is nothing that

\(^{10}\text{Compensation to the firm from the individual to be excluded from the firm address register may be limited to that the firm saves when avoiding to use send outs on uninterested individuals. This leads to that those individuals are not obliged to offer any additional send outs. (Holmén 1993)}\)
prevent the individuals to take out further compensation from the firms for their own sake leading to that the price may well exceed the authority price.

Further on, in this case where the right is assigned to the individuals, the public data may no longer be considered as common property and it is possible to exclude different firms. The extent of the firms’ access to public input to the address register depends on the agreement made. Analogous is valid for the firms’ address register which the individuals also control. Dissemination from these registers to other firms depends thus upon the consent of the individuals.

With the assumption of zero transaction costs there are no complicated effects. An example will be used to explain the effects. An individual interested in receiving direct marketing from a specific area, for example travelling in Asia, may contact different firms or agencies in this specific business. The individual makes contract with some of the contacted firms about transferring personal data and data about area of interest, in exchange of brochure and offers. However, the amount of the send outs may lead to that the individual feels nuisance when his letter-box is crowded with offers and thus would like to reduce the level of send outs. The contract with the agencies are then renegotiated in purpose of receiving more specific direct marketing, for example travelling in China only. This is only one example of how agreements can be made and the discussion can be expanded to other areas and sectors as well. Individuals may disclose data to insurance companies or give consents to use public personal data in order to receive specific and individual offers. In these kinds of cases the individual discloses personal data not only about addresses but also about income, fortune and family situation. (See Holmén 1993)

When the individual makes agreements with the firms he balances between the value of reduced sorting cost and the possible nuisance that can be the consequence of the use of the disclosed data. With the assumption of zero monitoring cost the possibility can be excluded of dissemination of personal data to other firms with which no contracts are made. Thus the individuals are able to control that the firms are staying to their part of the contract. Further on, with the possibility to renegotiate the contract the individual is able to adapt the agreement to new preferences and to new area of interests.
Before the agreements and establishments of the contracts there do not exist any send outs. The firms are prepared to compensate the individuals for using their personal data in the address register. Alternatively can be when the individuals "buy themselves" into an address register. Both possibilities can exist and the value of the direct marketing is the reduced sorting cost. How the value is distributed between the parties is however a question of negotiation. The diagram 3.1 can be used to demonstrate the situation. To reach the optimal level of send outs, $X_1$, the firms are willingly to compensate at most the area of $ab0g$. The individual demands a compensation of the area $abe$. With the assumption of zero transaction costs the parties will negotiate towards the optimal level of use and production. (Holmén 1993)

The final conclusion is that with zero transaction costs the levels of send outs will be the same irrespective the assignments of rights. The parties are able to negotiate and transfer the right to the data until they reach the solution that is pareto-optimal. The difference between the two kinds of assignment of rights is that the distribution of profits and compensation diverge. When the rights are assigned to the firms the individual may have to compensate them in order to be excluded from the address register. When the case is opposite the firms could instead be forced to pay compensation to the individual in exchange of access to the personal data.

### 3.2 When Transaction Costs are High

When the assumption about zero transaction cost is change towards high costs the assignment of the right will become significant. With high transaction cost agreements of transference of right will probably be hindered leading to that the original assignment will be maintained. To understand the situation the two cases mentioned earlier will be examined again, i.e. the right assigned either to the firms or to the individual.

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11 Compensation may be of different kinds. Some firms may offer discount to the price of the product or offer the possibility to participate in product competition. In those occasion the firms ask explicitly or implicitly for the possibility to use the personal data in direct marketing.
3.2.1 The Right is Assigned to the Firm

When the right is assigned to the firms and when there exist high transaction costs the firms behave as earlier and maximise their profits of the production of the address register. This means that the level will be at $X_0$ in the diagram 3.1 where the marginal income is equal the marginal cost of the last input. With these assumptions the firms will to a great extent not consider the individuals when they decides the level of production. This results in a suboptimal production with negative external effect and nuisance for the individual. However, there may exist some firms that have incentive to avoid send outs with contents that invades the privacy since such nuisance can result in sales that are less than the expected. The target groups in those occasions will probably be changed in the next selection. Thus, even without agreements the firms may be aware of the negative external effects when they make their cost and income calculation. (Holmén 1993; Kronman, footnote 67, p 745 1980)

From the individual's view high transaction costs will probably lead to that he fails to communicate to the firms about his interest in reducing the use of the personal data. This leads further on to that the individual will not be removed from the address register. High search cost makes it almost impossible to find all the firms that has collect personal data in purpose of direct marketing. Even though the individual may conclude some agreements it would be very expensive to monitor that the firms stay to them and do not disseminate the data further on.

The increased possibility to use personal data that the development of IT has created may further on have two partial opposite effects on the level of send outs and the nuisance mentioned of crowding effect. First it may lead to higher amount of firms that use the personal data as input in their register resulting in higher levels of send outs per person and thus a possible increase of the crowding effect. However, a greater access of public personal data may also lead to that the address registers become more elaborated. With these new kind of register the firms are able to make a more precise selection of the target group leading to reduced amount of send outs. In the extreme, if the firms know all about the individuals preference and personal economy they will be able to make perfect selections. The individuals will then be interested in all the send outs and the crowding effect ceases to exits. Thus
increased access to personal data may either increase or reduce the risk of crowding effect. However, it is not possible on theoretical ground to state which effect will be dominant\textsuperscript{12}.

### 3.2.2 The Right is Assigned to the Individual

With the assumption of zero transaction cost the individual could made agreement with the firms to disclose or give consent to use public personal data. Changed assumption of the transaction cost leads to that such agreements will probably fail. The individual's search for firms and the negotiations are likely to be combined with high cost. The same is valid for those firms that are interested in having access to personal data since they must find all those individuals to whom the data are concerning. Further on, the individual must also monitor that the contracted firms stay to the agreements and not disseminate the data to other firms without consents. Those few agreements that nevertheless are made will probably less precise and less adapted to the individual's preference.

This situation with the rights assigned to the individual can, as earlier, be described with the diagram 3.1. Without any agreement to use the personal data the level of send outs will probably be very low, close to X\textsubscript{2} in the diagram. At this level the marginal net income (the graph MNI) is much higher than the marginal net damage (MND), which is even below the x-axis due to the positive effects of the reduced sorting cost.

However, there may exist situation when the above assumption is not valid. It is true that the search and negotiation cost hinder the agreement of legal disclosure or legal access to the personal data. The monitoring cost makes however it impossible to control illegal use and dissemination of such data between and by the firms. Even though they should not have access to personal data there may exist many ways to get hold of the data (through the Internet or bribing personnel at the single authorities). The new IT makes, further on, processing of the data (including dissemination and compilation) and productions of direct marketing possible for interested and unscrupulous users. This may lead a level of send outs above X\textsubscript{2} which in its turn results in increased negative external effects as invasion of the privacy and/or crowding effect. (Holmén 1993)

\textsuperscript{12} Holmén found in her study from 1993 that there exist some empirical grounds that the crowding effect of increased access public personal data is quite extensive.
With the existence of transaction cost (excluding the fact of illegal use) the different assignment will cause different external effect. In the case where the personal data where assigned to the firms the use where too extensive since lack of consideration by the firms. The effect where either invaded privacy and/or too much send outs leading to that useful information was crowded out. In the opposite case there was a too little use of the personal data leading to the reduced sorting cost could not be benefited by both parties. Thus, due to the transaction costs there does not exist any optimal solution based on free agreements between the parties and the different assignments benefit different groups. However, in either assignment most of the individuals are losers since they have to choose between reduced sorting cost of invasion of the privacy/crowding effect (compare with the dilemma mentioned in 3.1.1).

3.3 Solution to External Effects

To overcome the problem of transaction costs, externalities and how to assign the rights the State or the lawmakers (politicians) do have some tools in purpose of regulating the use of personal data. However, before discussing such "imposed" solutions a voluntarily alternative will first be examined

3.3.1 Information Broker

In the case where the rights were assigned to the individual the transaction costs hindered those who were interested of reduced sorting cost through direct marketing. One way of pass by this problem, suggested by Holmén (1993), is to transfer permanently the rights of some of the personal data to a sort of information broker. This means that an intermediary agency collects information about, for example, names, addresses, ages and area of interest from those who are interested of direct marketing. The firms interested in finding target groups for their products contact the information broker with needs of finding data of certain criteria. The issue of monitoring cost may answer the question why the transfer of the right must be
permanently. Once those personal data are disclosed to information brokers, the individual will have difficulty to control to which the data further on are disseminated. The level of send outs will with this method diverge from $X_2$ and may end up both left or right of the optimal level of $X_1$. At the worst the increase use of personal data may result as before in both invaded privacy and/or problem of the crowding effect.

### 3.3.2 Information Zones

To solve the problem of nuisance the politicians may use the process of zoning. This means that the property right is assigned differently in different kinds of zones\(^{13}\). This process can be applied on the use of personal data in direct marketing in purpose of avoiding possible negative effects caused by the send outs. Within the different zones the property right to the personal are assigned differently depending on the kinds of data. This may imply that the firms, without negotiations, are allowed to use public data as name, addresses and income in the purpose of direct marketing. Other kinds and more sensitive data - inter alia political opinions, religious beliefs and sexual habits - are outside this information zone. The individual will have complete right to these kinds of data towards the firms. (Holmén, 1993)

Some individuals may consider zoning as restriction of the control of their own personal data. However, this is necessary not the case since information zones may lead to facilitated communication between the individual and the firms leading to increased benefits of reduced sorting costs. In this way the problem of transaction costs will be passed by if the individual was assigned the rights. If, however, the rights were assigned to the firms or information brokers, information zone will reduce the possible nuisance that may affect the individual. (Holmén 1993)

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\(^{13}\) A common example of zoning property right is the division of land into residential areas and industrial zones. Within the residential area it is prohibited to construct industrial complex that causes nuisance to the inhabitants. Industrial activities are instead placed in special zones where they hopefully not cause problem and external effect to the surrounding environment.
There does not exist any zoning process that suits all individuals since each has different preference and needs. As mentioned earlier the individuals are interested in some direct marketing but wish to avoid others. Therefore it is motivated with some kinds of transferable rights to zones. With such right the individual is able to expand or restrict the information zone of direct marketing to the level of send outs (and use of personal data) that does not cause him nuisance, and hopefully gives him the benefits of the send outs. This means that the individual transfers the zone rights and internalises all external effects, both positive and negative ones.

The result of transferable zones can be illustrated with diagram 3.1 where $X_Z$ is the level of send outs that includes the positive effects of reduced sorting and excludes the negative effects of the invaded privacy. This level is, however, not optimal for the society since the marginal net income is higher than marginal net damage. Thus there will be some individuals still interested in making agreement with the firms to expand the information zones in exchange of compensation to the level of $X_1$ but fail to do so due to high transaction costs.

The common procedure of transferring zone rights is to establish a single governmental body or authority which administers the zoning process (henceforth called zoning authority). Those individuals that are interested in transferring the zone rights (expanding or restricting) notify this zoning authority which then regulates the new borders and notifies further on the firms. In this way the single individual or the single firm avoids the transaction costs since they do not have to find and negotiate with each party. The individual with this method can also have the right to make changes within the zones and block some personal data for some firms. The zoning authority may further on be assigned a kind of supervising role in order to control that the firms' use of the personal data is correct and that personal data are not disseminated outside the information zone. However, this role can be difficult to execute due to the high monitoring cost.
Even though the transaction costs are avoided with transferable zone, the State or politicians may have some incentive to make a balanced initial zoning. This due to that the individual nevertheless can be caused some costs when he change the size of the information zone. These costs concern furthermore the individuals time and trouble to change the size. If the information zone is rather small, those individuals who are interested in direct marketing will have to be active and notifying the zoning authority in order to expand. The same is valid if the information zone is too large. Those individuals worried about their privacy must be active and restricts the firms' zone. Also this situation may be illustrated in diagram 3.1. Imagine that the initial zoning starts at level $X_Z'$. With the transferable zone the individual restrict the information zone by notifying the zoning authority and the production moves towards the level of $X_Z$. However, if it takes too much time and it is too circumstantial to restrict the level, the assignment will remain the original of $X_{Z'}$ causing the individual costs corresponding to the difference between the dotted line and the X-axis.

Another reason to have a balanced assignment at the beginning is to avoid the administrating cost of the zoning procedure. If those costs are low or non-existing the individuals' activity to change the information zone do not matter for the State. However, if they are significant, it will be important to be close to the individuals' preference when the zoning is made. (Holmén 1993)

The State has thus incentive to reduce these cost of the activity. Holmén (1993) suggested in her study a kind of majority rule, which assigns the property right to the personal data within the zone where the majority of the individuals prefer to have it. This means that personal data that the majority considers rather harmless, for example, data about names and addresses will be assigned the firms within the information zone for direct marketing. More sensitive data concerning, for example, sexual habits or personal health are probably preferred by most individuals to be placed within the private zone\(^{14}\).

\(^{14}\): Holmén states that it would be rather easy to find such knowledge using random sample or questionnaire. If, however, the costs of finding such information are too high, will the advantages of the majority rule vanish. The rights may in this case be assigned arbitrarily, given that the individuals have the transfer zone rights in purpose of changing the legal state. (See further Holmén, 1993)
Despite the preferable goal of optimising the level of send outs with the zoning process and majority rule, other interest that may be prevailing. Politicians and interest groups may have other preferences for the zoning procedure. Business organisations and firms are interested to use much data as input in their register production in the purpose of direct marketing. These groups thus prefer to have a large zone for personal data in order to increase their access. Other groups may have opposite opinion about the size and try to convince the politicians to strengthen the individual's right to privacy by restricting the information zone. Culture and views on the property right may also influence the zoning procedure by either restricting or expanding the zone for direct marketing.

3.3.3 Consent and Objection

There are other ways of regulating the use of personal data within the system of information zones. I will here discuss the use of consents - both indirect and direct - which purpose is to allow processing of personal data and the possibility to make objections against such processing. The system of consent is preferred by some scholars, since it is consider to reduce the risk of invasion in the privacy.\(^{15}\)

Consent means in this study that the individual gives the firms access (until other notification) to public personal data. Whether such use is permanently or temporarily depends on the system of the consent and objection. Consent given freely and directly to firms of using public personal data in direct marketing may, however, be prevented by high transaction costs. Since both the individual and the firms are interested in reducing the sorting cost it can be motivated to use indirect consent for direct marketing to overcome the problem of transaction costs. This means that the firms have rights to use the data for such purpose until

\(^{15}\) Göran Collste from the Centre of Applied Ethics (Centrum för Tillämpad Etik), The University of Linköping is of such opinion. The Swedish terms he uses for direct and indirect consent are *samtycke – icke samtycke*. (See SOU 1997: 39, p. 802)
the individual's object. Such objection may concern all the processing or only in purpose of blocking some personal data.

The objection has the same problem as the direct consent since the contacts between the individual and the firms are probably hindered by transaction costs, with the exception of authorities. Due to these costs it can be appropriate to use the zoning procedure and exclude some sensitive personal data for direct marketing. Which kinds of data are sensitive and which may be in the firms' information zone must be decided, as above, by the State and the politicians. Also in this case it may be of some interest to reduce the individuals time to be active, either to give direct consent or to object the processing of personal data that cause nuisance. Comparing with the zoning authority is the method consent and objecting less efficient due to the existence of transaction costs, since the individual must contact each single firms (and authority in some case of objection).
4. Interpretation of Directive 95/46/EC

The EU has recognised the effects of the technological development on the use and processing of personal data. This together with the ambition to harmonise the Member States national legislation concerning personal data has led to that the European Parliament and the Council in 1995 adopted a Directive on the issue. The Directive 95/46/EC concerns the protection of the individual with the regard to the processing of personal data and on the free movement of such data. The Directive was to be implemented by the Member States within three years (in some cases six years). Since the Member States had very different national legislation such implement was applied differently leading to different effects of the use of personal data. To understand these effects there will be first in section 4.1 a very short description on the organisation of EU and the Community laws which it may use. Thereafter I will in 4.2 concentrate me on the Directive itself with respect the provisions concerning personal data in direct marketing. Since there are some disparities between the Member States, there will be, when needed, comparison between two of them - the Swedish Personal Data Act\textsuperscript{16} (SFS 1998:204) and the Italian Data Protection Act\textsuperscript{17} (no. 675 of 31.12.1996).

4.1 The Structure of EU and its Community Legislation\textsuperscript{18}

The EU structure and legislation are based furthermore on the treaty of Rome from 1957. This treaty, often denominated as EC treaty, is one of the European Communities (EC), which in their turn is one of the three EU pillars. The EC treaties and furthermore the treaty of Rome can be seen as the constitution of the EU, which in some area restrict the Member States sovereignty and national legislation. The EC treaty may with its Article 189 confer secondary legislation on the Member States that in different ways regulates the national laws and change them if necessary. There are five different forms of secondary EC legislation that may be used

\textsuperscript{16} The Personal Data Act is from 29.4.1998 and has the number SFS 1998:204. In Swedish it is called Person uppgiftslagen (PUL). There exists an other legislation that regulates the processing of personal data. This is the Personal Data Ordinance from 3.9.1998 and has the number SFS 1998:1191. Both the Act and The Ordinance have Swedish and English versions, which can be found on the Internet site of Datainspektionen, http://www.datainspektionen.se/.

\textsuperscript{17} The Italian Data Protection Act concerns "Protection of individuals and other subjects with regard to the processing of personal data". The Italian supervisor authority’s official Internet site provide an English version of the concerned law, see http://www.privacy.it/legge675encoord.html. In this official site it can also be found interpretation of the provisions in the law.
by EU, all depending on the kinds of law and on the issues concerned. The different forms are Regulations, Directives, Decisions, Opinions and Recommendations. Of these is regulation the strictest form making the EC Legislation or EC law directly binding for the Member States.

The second form, Directive, is the form of interest to this thesis and will thus be examined more closely. Article 189 provides that the Directive is binding to the extent that the Member States apply it to their own national legislation. The scopes and objectives are set on the Community level but the Member States are free to choose the form and methods to transpose the obligation into domestic laws. The only obligation the Member States have is to implement the objective within the time limit specified in each Directive. This flexible form of EC legislation allows the Member States to adapt the Community/EU objects to domestically circumstances and national particularities. For this reason the Directives are often used in order to achieve harmonisation of the Member States and have been the principle instrument used for the establishment of the internal market. However, this flexibility may in some cases lead to different interpretations and applications of the provisions. These different applications can maintain the differences that existed earlier or even create new ones.

There are two kinds of Directives concerning the levels of safeguard. There are those with only a minimum level and those that have both lower and upper levels. The first kind requires that each Member State guarantees the minimum level but allow national laws of with high safeguard level. The second kind requires that the Member States form their national laws within specified limits and they are thus not allowed creating legislation with higher safeguards levels. (See SOU 1997:39, p. 110)

The interpretations of EC laws, as Directives, are much more difficult than the interpretation of a Swedish law for example. The reasons are furthermore two. The EC laws do not have much or any official preparatory work since most of them are kept in secret. Instead, the intentions, aims and background of the laws are described in a sort of initial preamble. The second complication of interpreting is the variety of the official EU-languages. All EC Laws are translated into all the official language and all of them have the same validity. This may lead to some complication of an overall interpretation if the language

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18 This section is based on Voyatzi 1996
differences in the official documents are too wide (see SOU 1997:39, p. 111). The version I use in this thesis is the English one, but the provisions examined do not contain important differences to the other languages including the Swedish one.

4.2 The Provision Concerning Direct Marketing

The Directive 95/46/EC contains preamble of about 70 paragraphs, describing the aims and purpose and about 35 articles concerning the lawfulness of the processing. The Directive concerns much more than the issue of direct marketing but the overall structure can be analysed and applied to the situation of processing, sorting costs, nuisances and zoning procedure. In the introduction I tried to discern some of the provisions that the Directive contains concerning direct marketing. Since the issue of direct marketing concerns a very little part of the Directive and is spread out on different provision, I have tried to bring them together and examined them with help of the model and theories described earlier. (The provisions are collected and illustrated in a table in Appendix 1)

4.2.1 Nuisance versus Reduced Sorting Cost

The EU must have been aware of the conflict to both protecting the individuals right to freedom and privacy, and the need to sustain economic benefits, as reduced sorting cost. This since the Directive contains both upper and lower safeguard restrictions meaning that the Member States must protect both the individuals' privacy and to contribute to economic progress and trade expansion (see paragraph 3 in the preamble). These restriction is also mentioned in the Directive's first Article where the first paragraph states that the “Member States shall protect the fundamental rights...of the natural persons, and in particular their right to privacy...”. The second paragraph puts however a restriction that the first paragraph must not hinder the free or prohibit the free flow. Comparing Article 1 with diagram 3.1, the first paragraph tries to reduce the individuals nuisance represented by the MND graph above the X-axis. The second paragraph can further on be seen as protection of the benefits generated by reduced sorting cost.

These restrictions set the frame for the Member States but due to the margin of manoeuvre that Directives in general give, there has been different interpretation and applications of the provisions. These disparities may cause effects on the movements of data
between the Member States, which also the Directive has predicted and can thus be seen as contradiction to its objectives (see Paragraphs 8 and 9 in the Preamble). The Directive gives such margin of manoeuvre to the issues of direct marketing, which has open for different application among the Member States. One of the differences can be mention already in this context. Sweden has chosen to protect only the natural persons' right to freedom and privacy. Italy, considered to have the most rigid application, has taken the step even further and protects also the legal persons (e.g. firms and organisations etc).

4.2.2 Consent or Indirect Consent to Process Personal Data

The firms' possibilities to use and process personal data are regulated by the Article 7 (and by Article 8 concerning the special categories of data, which will be seen further on). Article 7 provides the criteria that make data processing lawful. The main principle, stated in the letter (a), is that processing is lawful only if "the [individual] has unambiguously given his consent...". However, the Directive provides other occasions where a direct consent is not necessary to make process of personal data lawful (i.e. indirect consent is given). These occasions concern among other: performance of contracts; compliance of legal obligations; and protection of the individual vital interest. Letter (f) of the Article brings up the occasion when, for example, firms and organisations may have legitimate interest that make it necessary to process personal data, except when such interest are overridden by the individual's interest of freedom and privacy. Paragraph 30 in the preamble states which such interests are legitimate and that the Member States must balance the interests between the parties and guaranteeing effective competition. In order to do this the Member States may determine how processing of personal data are lawful in business activities without the individual's direct consent. The same is valid for how to disseminate data to firms in purpose of direct marketing and allowing them to process such data in order to find potential clients. This is valid not only for commercial aims, but also for charitable organisation or by any other association or foundation. Indirect consent in this context can be interpreted as a method of overcoming the problem of transaction costs of finding clients. Paragraph 30 together with paragraph 71 in the preamble gives the Member States the possibilities to form their own laws concerning direct marketing as long as it does not concern the protection of the individual. However, if the Member States choose a non-restrictive interpretation, meaning that the firms
have the right to use the personal data without negotiating with the individual for a consent, the firms will in practice been assign the right to the data.

Sweden interprets that in those cases firms are interested to use personal data in commercial context the interest must be decided after a comprehensive judgement. However, when concerning direct marketing the Swedish politicians have formed their legislation as the above described, with the rights for the firms to process personal data. This with the motivation that as long as the individuals do not object against the use of public personal data in direct marketing they will give their consent, i.e. indirect consent (see SOU 1997:39, p. 361).

Also in this context is the Italian legislation much more restrictive. Processing of data by firms and profit-seeking organisations is lawful only if the individual gives his consent. The consent must be given freely in specific and written form, together with the purpose of the processing. The consent may, further on, concern the whole processing or only parts of it (see Article 11 in of the Italian act no. 675). The act admits, however, some occasions the possibility to use indirect consent for processing of data in commercial context, as direct marketing, but only if the purpose does not divert too much from the original purpose.

4.2.3 The Purpose of the Processing

The Directive provides with Article 6 (b) that personal data "must be...collected for specified, explicit and legitimate purpose". Additionally, the data collected must not be further processed in ways that are incompatible with the original purpose. Public personal data that collected from public register ought to be allowed for processing for direct marketing since the purpose of the register is to be official. However, is this valid for all data that can be collected from public authorities and from other firms? This is about how to interpret the provisions, in restrictive or liberal ways. The governmental report, SOU 1997:39, states that the EU/Commission has demanded that the definitions must not be vague or described with terms as "commercial purposes", all in order to avoid problems of misuse (see p. 125).

Sweden has chosen a quite liberal application of the provision. The State/politicians have transferred the main part of Article 6 into the Personal Data Act. The purpose of the processing must be specific, explicitly stated and justified. Further on, shall the processing not be incompatible with the original purpose. However, the Swedish Act does not give much detail on how the provisions are to be interpreted or applied. The outcome is to be established
by practice and more precise rule by the Swedish Government or the Swedish Supervisor Authority (Data Inspektionen). The same is valid for the issue of direct marketing, whether personal data may be used or disclosed for that purpose. This means that there are no clear rules of how to define data for direct marketing and establish balancing the interest between different parties, which may lead to problem of hindering some unwanted processing. (SOU 1997:39, p. 349-350)

As mentioned in the other occasions, have the Italian politicians taken a more severe standpoint. They regard the term "incompatible processing" of the personal data much stricter, and require that a written consent from the individual is needed when the new purposes diverge too much. This means that data collected, for example, to accomplish a contract may not be used for direct marketing, leading to that the Article 7 (f) in the Directive cannot be used (see Article 9 (d) and Article 12 (f) in the act). However, there are two occasions where the direct consent is not necessary. First, when the data are collected from public register and lists which purpose is to be public. The second occasion concerns data disclosed, for example, to information brokers in purpose of direct marketing. Such disclosed data may further be used or disseminated for that very purpose without the written consent.

4.2.4 The Right to Object

In either of the interpreted cases do the individuals have the possibility to object the processing of personal data and block such use if necessary. The Directive gives with Article 14 (b) the Member States two alternatives to choose between. First to "grant [the individual] the right...object, on request...to the processing of personal data relating to him...processed for the purpose of direct marketing, or to be informed before the personal data are disclosed for the first time to third parties...for the purpose of direct marketing, and be expressly offered the right to object...to such disclosure". The Member States shall further on take "the necessary measures to ensure that the [individuals] are aware of the existence of [such right to object]". However, information to the individual about disclosure of personal data is not needed if it proves impossible or would involve a disproportionate effort (see Article 11 paragraph 2).

The Swedish Personal Data Act provides that processing in purpose of direct marketing shall not to be allowed if the individual notifies the firms or authority that he opposes it (see section 11). By this the Swedish politicians have chosen the first alternative of
the Article 14 (b) with the motivation that it is the least complicated and it gives good possibilities to hinder unwanted processing. The notification must, further on, be written and signed by the individual himself. The Governmental Report SOU 1997:39 states, concerning the last part of the Article, that the Swedish Supervisor Authority is responsible for informing the parties about the individuals right to object19 (see p. 364-365). The Report, with the support of Article 11, provides, however, that the firms that use many send outs do not need to inform the individuals about the processing and the possibilities to object until they receive the send outs (see p. 386-387).

The individual must thus be active to find those authorities and firms that disclose or process his personal data. The individuals may contact those existing Swedish "block-registers"20 in order to hinder disclosure personal data in purpose of direct marketing. However, not all individuals are aware of these possibilities and not all firms collect the data from sources that are in contact with these blocking registers. This can lead to that most of the politicians' intention to protect the individuals right to freedom and privacy will probably fail due to high transaction costs. The provision concerned the individual's activity of objecting the processing, together with the indirect consent mentioned in 4.2.2 assigns in practise the right to normal data to the firms.

The Italians politicians, in their Data Protection Act, have included the second and more restrictive part of the Article, concerning compulsory information to the individual. The article 13 (e) provides that the individual shall be "informed by the controller not later that the data are...disseminated, of the possibility to exercise [the right to object]". This means that authorities, information brokers or firms ought to give the individual the right to object at any time the data are disclosed to new parties. This is much severe than the Swedish version and even more restrictive than the Directive's, which states only the need to inform the first disclosure. Further on, this possibility to object together with the provisions of purpose

19 I wrote e-mail to Data Inspektionen concerning this obligation. They responded (in January 2000) that I could find information about the issue of direct marketing in section 11 in the Personal Data Act. This means that they until now have not adopted provision regarding the issue.
20 There are two major registers that have the possibilities to block data in the purpose of direct marketing. SPAR (Statens Person och Adress Register - The official register on addresses and personal data) must block data after notification from the individual. However, the data may be disclosed in any way for official reasons, but on paper, which hopefully hinder or give signal to the firms that the individual is not interested. The second major register is the Nix-list administrated by SWEDMA (The Swedish Direct Marketing Association - a branch organisation for direct marketing firms), which purpose is to inform the firms before they use send outs (see Datainspektionen Rapport, 1998). Recently has there been created also a Nix-list against telemarketing and SWEDMA has intention to create a list against e-mail marketing.
restrict the firms possibilities to use and disseminate data for direct marketing, assigns more or less the rights to the personal data to the concerned individuals.

4.2.5 Information Zone and Sensitive Data.

The Article regarding indirect consent, together with the above concerning objection will in more liberal application assign indirectly the rights to the data to the firms. In order to avoid processing of sensitive data that may cause the individual nuisance the EU has distinguished two kinds of personal data or two kinds of information zones. Articles 7 mentioned in 4.2.2, concerned the processing of "normal" data in different circumstances, including commercial situations and direct marketing. The following article, Article 8, brings up provisions regarding special categories of personal data, which are viewed by EU as too sensitive to be process and are thus placed in a more private zone. The first paragraph provides the "Member States shall prohibit the processing of personal data revealing...ethnic origin, political opinions, religious...beliefs, trade-union membership, and...data...concerning health or sex life". However, the second paragraph letter (a) states that processing of such data will be allowed if the individual gives his explicit consent, unless the Member State provides the opposite. This means that the individual can be prohibited to disclose sensitive data in purpose of concluding contracts or direct marketing. As in paragraph 7 there exists situation where indirect consent is given, concerning among other (b) the field of employment law, or when (c) it is necessary to protect the individuals vital interest or when (d) the processing is carried out by non-profit-seeking organisation for, for example religious or trade union aim. The letter (d) provides further that such organisation must be in regular contact with the individual to whom the data concerns and that disclosure of personal data to third parties must have the consent mentioned in the letter (a).

Processing of sensitive personal data in direct marketing is lawful at the first glance only with the individuals explicit consent. However, there could exist the possibility to use the non-profit-seeking organisation for the purpose mentioned above. Firms can make agreement with those organisations in order to include offers in or with the member papers, either as advertisement or as separate send outs. It is true that such kind of direct marketing can be considered indirect, but it is one way to find target groups and pass by the prohibition.

The Swedish politicians chose not to include the alternative of prohibiting the individual's consent to use sensitive data in different contexts, as direct marketing. This
choice was motivated by the argument that the individual knows best about his preferences and are therefore able to decide which of the data are too sensitive and which data may be processed (See SOU 1997:39, p. 369). The result is that the individual is assigned the right to both exclude unwanted parties and transfer the rights of processing to firms of interests.

Italy has included the more restrictive part of Article 8, and state that the individual must give his consent in written form, subject to authorisation by the Italian Supervisor Authority (II Garante). Further on, shall the Garante communicate its decision within 30 days, otherwise the request of processing will be dismissed. This is quite opposite standpoint to the Swedish one, and the legislation does not even give the individuals the right to decide about sensitive data and transfer the right to use them to firms in the context of direct marketing. The Italian Supervisor Authority takes thus a more important role (see Article 22 in the Italian Data Protection Act).

4.2.6 The Supervisor Authority

Each Member State shall provide that there exists a public authority responsible for monitoring the application of the Directive and act as consultant body both to the government and to the individuals. The Supervisor authority is in particular endowed with powers (i) to investigate processing operations; (ii) to intervene such processing by blocking personal data and in some cases put temporary or definitive ban; and (iii) to bring violation of the Directives provision into court. The Supervisor authority shall further hear claims from any individual or association concerning the protection of the individuals personal right to freedom and privacy. (See article 28 in the Directive). Those parties and firms that process personal data in different contexts must notify this to the Supervisor authority before they start the processing. However, there are situations that this notification can be simplified or exempted. These occasions concern among other when it is unlikely that the processing affects the right to freedom and privacy, and when the firms has appointed a "data protection official"\(^{21}\) (see Article 18).

The Supervisor Authority's purpose is then quite different than the one of zoning authority mentioned in 3.3.2. It is not to administrate the individuals' request of transferring the right to process personal data and reduce the sorting cost. The endowed powers give the authority to monitor and ban illegal processing, but it cannot help those individuals who are interested in hindering the use of personal data in direct marketing, or the opposite, facilitate such processing in purpose of receiving direct marketing.

\(^{21}\) The Swedish Authority has made an agreement with SWEDMA (Swedish Direct Marketing Organisation) of being exempted of the obligation to notify processing. The SWEDMA will regulate themselves and have adopted additional provisions concerning direct marketing, which however does not change anything of the analysis of this thesis (Data Inspektionen 1999).
5. Analysis of the Provisions Concerning Direct Marketing

The EU with the Directive has both tried to protect the individual's right to freedom and privacy and to sustain the economic development. In the same time there where the objective to harmonise the Member States national legislation concerning the processing of personal data and the levels of safeguards. However, since the Directive has left margins of manœuvre and possibilities to chose between alternatives, the national applications have led to quite different results and thus different levels of protection and economic benefits.

When the provisions are summoned concerning direct marketing, a first overall observation can point out that there is a kind of system of information zones. One that includes those personal data available for commercial use, as direct marketing. The other zone contains personal data considered by EU as too sensitive for processing. However, due to Article 7 (f) and Paragraph 30 (indirect consent and balancing of interest) and Article 6 (b) (purpose of the processing), together with Article 8 (sensitive data), the Member States can and have assigned the right to the data differently within the zones. Further on, zoning between normal and sensitive rights when there exist high transaction costs can be considered as a reasonable way of avoiding nuisance and support the economic benefits (see 3.3.2 above). It was not described, though, on which premises the initial zoning was made. But since EC laws and EU objective are made trough agreements by the Member States and their politicians the zoning is probably based on political arguments. The Member States, with the margin of manœuvre, can adapt further the zoning to the political and, in some cases, cultural domestically circumstances.

Sweden that interpreted the provisions in more liberal way, assigned, at least at a first glance, the rights to the firms within the zone of normal data and the rights to the zone of sensitive data to the individuals. When this is true for the assignment of rights to sensitive data, there could be some doubts about the assignment to the normal data. The EU gave the Member State the possibility to decide which interest is to be balanced and how to interpret the term incompatible purpose. Sweden, however, has not established precise provisions and practice concerning data for direct marketing and thus how to specify the right to the data. An extreme view can be that there does not exist any specified rights at all and the firms are allowed to optimise the processing without any regard of the individuals. This view can be contradicted, though, by the argument that the individual always has the right to object such
processing and thus puts some restrictions to the firms. The reason why Sweden has chosen to take such standpoint and avoids specifying rights to data could be the combination of comparatively weak tradition of property right and the strong tradition of openness and transparency in the public authorities' activities.

The Italian legislation has also adopted a kind of zone system, but from another position. The zone that contains the normal data, compare to the Swedish application, is in practice assigned to the individual instead. This observation is based on the fact that all processing of personal data in purpose of direct marketing will only be allowed if the data were collected for that very purpose. Those firms that use data collected for another purpose must turn to the individual and convince him to sign on a specific request. Further on, those data that have been collected for the purpose of direct marketing may be used for that purpose but when the data are disseminated to other parties the individual must be offered the possibility to object such disclosure not later than the dissemination. This means in practice that the individual has control of those personal data aimed for legal processing. Continuing with the zone that concerns the sensitive data the situation change further. When the Swedish legislation assigned this zone to the individual the Italian Act assigns the right to the State and the Supervisor Authority, Il Garante. This Authority must approve the consent of disclosing sensitive data within 30 days. If the answer is negative or does not arrive within the time limit the individual's request will fail. This leaves the individual no control of his own sensitive data. That by the Directive left margin of manoeuvre can be interpreted differently causing the consequences of different assignments of rights to the personal data. The situation can be illustrated with table 5.1 below.

Table 5.1. How the Directive's provisions may lead to different assignments of the zone rights

<table>
<thead>
<tr>
<th></th>
<th>The Firm</th>
<th>The Individual</th>
<th>The State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sweden</td>
<td>N</td>
<td>S</td>
<td></td>
</tr>
<tr>
<td>Italy</td>
<td>N</td>
<td>S</td>
<td>S</td>
</tr>
</tbody>
</table>

*N* = Assignment of normal data

*S* = Assignment of sensitive data
These different assignments of the rights between the Member States and the method of transferring the rights with consent and objection will affect the use of personal data and the level of send outs. This method of changing zone rights does not have the advantage of the zoning authority to pass by the problem of high transaction costs. This means that the use of personal data and the level of send outs would remain close to the initial zoning. By using a modified diagram from chapter two can the situation be demonstrated graphically.

Diagram 5.1. The different assignment of zone rights between the two Member States Sweden and Italy

With an assignment and zoning of the Swedish kind the level of send outs will probably be quite high. This since the normal personal data are assigned to the firms, which will be used freely in the registers. How high the level will be is, however, difficult to estimate since the access of data can lead both an increased and reduced amount of send outs. First, may the increased access to data lead to that more firms use the data in the purpose of new finding clients causing a higher level of send outs. Second, increased access can also create more elaborated sorting processes making it easier to find the good target groups and thus reduces the need of many send outs. The zone of normal data probably contains most of the data needed for making sufficient processing causing a level of send outs at \( X_S \) in the diagram 5.1, which is beyond the socially optimal level of \( X_1 \). Since the method of giving direct consent
and object suffers from the problem of transaction cost the individuals will have problem of either exclude or included themselves in the registers. This leads to that level of send outs will probably remain at the initial level causing the individual invasion of his freedom and privacy, and in some occasion also crowding effects.

The Italian assignment leads to a different outcome and a lower level of send outs. Since the individuals to a great extent have the legal control must the firms be active and find those individuals interested by receiving send outs. The same is valid for those individuals that are interested in receiving offers about products and services that they desire. Such searching will be at a very low level due to the high transaction costs, furthermore the search cost. The individuals may turn to information brokers that transfer further on the data to the interesting sectors and firms. Despite this possibilities will the level of send outs be probably quite low, at least those that are based on elaborated processing. The firms may instead use considerably amounts of unspecified offers and leaflets causing the nuisance of increased crowding effects. The low level of send outs may end up at level $X_1$, which is clearly lower than the optimal level for the society. At such a low level both the individuals and the firms will miss most of the benefits derived from reduced sorting costs.

To conclude the analysis it might be stated that the EU has understand the problem of both protecting the individuals right to freedom and privacy and to sustain the economic benefits of the use of personal data. However, this problem together with the objective of harmonising the national laws has not been solved and accomplished in an optimal way. The vague provisions and the margins of manoeuvre have made it possible to interpret and apply the Directive differently. Further on, the choice of transferring zone rights by consent and objecting indicates that the understanding of transaction costs is not very high, leading to that the problem of externalities probably remains.
6. Conclusion

This thesis has treated some important issues. After analysing and applying the theory within the frame of Law and Economics some conclusion can be made:

- First, it is possible to apply the Coase Theorem on the issues of direct marketing. In fact the theorem works very well and it explains the importance of well-defined rights to the personal data and the need to understand the problem of the transaction costs. The issue of transaction costs leads; further on, to the importance of some kind of regulated system both protect those individuals that feels nuisance and benefits those firms and individuals that are interested to use or receive direct marketing;

- Second, it can be stated that the paradigm of Law and Economics is very suitable for the analysis of issues concerning right to freedom and privacy. The paradigm does not neglect the existence of the privacy or the invasion of it. Instead it explains its need together with desire or incentive to use the personal data in different context by different parties for different purposes;

- Third, with help of Law and Economics and the Coase Theorem I have tried to discern the provisions of the EU Directive 95/46/EC concerning direct marketing. The provisions where not very specified or gathered within certain sections. Instead I had to find and combine them into an integrated picture in order to make an analysis. EU has tried both to protect the individual's privacy and give the firms (and some individuals) the possibilities to use the personal in direct marketing. Further on, the overall objective was to harmonise the Member States national laws concerning the processing of personal data and thus creating a internal market. However, the Directive gave the Member States margins of manoeuvre in order to adapt the provisions into national circumstances, leading to that different interpretation and applications have arisen. The result is that the Member States has created different laws regarding the provisions of direct marketing and assigned differently the rights to the personal data, causing different levels of processing, send outs and safeguards levels.
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Useful Internet sites

http://www.privacy.it

http://www.riksdagen.se/debatt/tema/personupp/index.htm

http://www.datainspektionen.se/

http://www.pul.nu/
### Appendix 1

The provisions of the Directive 95/46/EC concerning direct marketing.

<table>
<thead>
<tr>
<th>Section in the thesis</th>
<th>Article</th>
<th>Comments</th>
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<tbody>
<tr>
<td><strong>4.2.1</strong> Nuisance Versus Reduced sorting Costs</td>
<td>Article 1</td>
<td>Both lower and upper levels, in order to both protect the individual's privacy and sustain economic development.</td>
</tr>
<tr>
<td><strong>4.2.2</strong> Consent or Indirect Consent to Process Personal Data</td>
<td>Article 7 (a) and (f) Paragraph 3, 30 and 71 in the preamble</td>
<td>Direct and indirect consent depends on the balance of interest and the purpose of processing. The firms may have the right to use personal data for direct marketing, without direct consent.</td>
</tr>
<tr>
<td><strong>4.2.3</strong> The Purpose of the Processing</td>
<td>Article 6 (b) and (c)</td>
<td>The purpose must be specific, explicit and legitimate. Further processing shall not be incompatible with the original purpose.</td>
</tr>
<tr>
<td><strong>4.2.4</strong> The Right to Object</td>
<td>Articles 11 and 14 (b)</td>
<td>The individuals has always right to object information. However information about this right together with the sources and purposes may be given in different ways. At the time of dissemination or when the individuals receive the send outs together with information from the Supervisor authority.</td>
</tr>
<tr>
<td><strong>4.2.5</strong> Information Zone and Sensitive Data</td>
<td>Article 8 Paragraph 1 and paragraph 2 (a) and (d)</td>
<td>In avoiding the processing of sensitive personal data for the purpose of direct marketing, direct explicit consent must be given. However the Member State may prohibit consent for such purpose.</td>
</tr>
<tr>
<td><strong>4.2.6</strong> The Supervisor Authority</td>
<td>Articles 18 and 28</td>
<td>The Supervisor Authority is endowed with the power to investigate and intervene illegal processing. However, the Authority cannot hinder unwanted processing or facilitate desired.</td>
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</table>