

Privacy in the digital age



Processing and transferring personal data via the Internet and new digital tools has become an important part of today's digital society. While this offers exciting opportunities for industry, consumers and the European economy, some believe that the increasing collection, usage and storage of personal data has detrimental effects for the privacy of individuals online. Fuelled by increasing consumer concerns, EU legislators are working on multiple fronts to respond to new privacy challenges arising from digital technologies such as RFID, cloud computing, social networking sites, search engines etc.

Recently, EU regulators put the spotlight on business models relying on the collection of personal data on the Internet to profile and target individual users for advertising purposes. The issue of data protection in general and behavioural advertising in particular is moving up the policy agenda and new measures are expected to be introduced.

This paper from Fleishman-Hillard Brussels provides a snapshot of hot topics currently being debated in the area of online privacy in Brussels.

Behavioural advertising

Consumer Commissioner Meglena Kuneva and Information, Society and Media Commissioner Viviane Reding have recently stated that the current situation with regard to privacy, profiling and targeting is not satisfactory and both have stressed their willingness to regulate. Kuneva has even hinted that she might blacklist companies who use behavioural advertising in an inappropriate way.

More specifically, both Commissioners have expressed strong concern about advertising services that use deep packet inspection to gather data about users' likes and dislikes and then serve them targeted advertising online.

This concern was manifested in April 2009 when the Commission started an infringement proceeding against the United Kingdom about the use of a particular type of behavioural advertising technology.

[Article 29 Data Protection Working Party](#)

This is an influential independent EU advisory body on data protection and privacy which has developed important guidelines on how EU Directives should be applied to the digital world. The Working Party highlights that:

- Advertisers and other companies must obtain consent when collecting personal data and data should be kept as anonymous as possible.
- Consumers should easily be able to identify what is happening with their data and what they are consenting to when they opt-in or out of a service.

Getting your voice heard: next steps

The European Commission is currently gathering input from stakeholders about behavioural advertising practices and whether existing legislation is adequate to tackle this. The Commission's team dealing with consumer affairs is particularly interested in hearing from industry and other experts in this area.

➔ **If your business is involved in behavioural advertising, this request for input is an excellent opportunity for you to contribute to the debate, shape future legislation and profile yourself amongst Brussels policy makers.**



"European privacy rules are crystal clear, a person's information can only be used with their prior consent. I will not shy away from taking action when an EU country falls short of this duty"

Viviane Reding,
Commissioner
for Information Society
and Media

"Our ambition is clear: we want the best data protection system in the world"

Jonathan Faull,
Director General, DG Justice,
Freedom
and Security

"The current situation with regard to privacy, profiling and targeting is not satisfactory"

Meglena Kuneva,
Commissioner
for Consumer Affairs

Reviewing the Data Protection Directive

A multitude of actors in Brussels ranging from NGOs to individual companies claim that provisions in the Data Protection Directive (dated 1995) have become obsolete and a review is therefore necessary in order to keep up with rapid technological changes. Justice, Freedom and Security Commissioner Jacques Barrot, who is responsible for this dossier, recently said: "we have to reflect on the possible necessity of modernising the existing legal framework to respond to the challenges posed by new technologies".

In a video post from April 2009 Commissioner Reding also joined the chorus of voices calling for a review of the Data Protection Directive.

Getting your voice heard: next steps

The European Commission will launch a public consultation later this year on issues relating to data protection and privacy. While it seems that this consultation will not specifically address the Data Protection Directive, all indicators are that the Commission will review it by 2011 at the latest. Its revision will impact all actors processing personal data.

- ➔ **Business with an interest in this field should start engaging in a dialogue with the Commission now.**



Data Protection Directive (95/46/EC)

- Central piece of EU legislation with regard to processing and free movement of personal data.
- Establishes basic common rules for the protection of individuals in relation to collection, adaptation, use, interconnection and deletion of personal data.



e-Privacy Directive

Currently under revision, the e-Privacy Directive is likely to include new and stronger provisions protecting individual privacy. For example, the revised version stipulates that companies must receive consumers' informed consent before storing cookies in terminal equipment that could be used to track user behaviour later on. This would require both Internet businesses and non-commercial websites to provide a special notification when a cookie is placed. The revised e-Privacy Directive is also likely to be extended to include social platforms and other eCommerce operators.

Getting your voice heard: next steps

With final adoption of the e-Privacy Directive expected for the second half of 2009, chances to feed into the EU process are now slim. However, once it is adopted at European level, Member States will have to transpose the Directive into national law.

- ➔ **Companies concerned about the specific provisions of the e-Privacy Directive should engage with officials at national level.**



e-Privacy Directive (2002/58/EC)

- The Directive covers processing of personal data and the protection of privacy in electronic communications.
- The Directive sets specific limits on how personal data can be stored and used.

Lisbon: a new era for data protection legislation in the EU ?

Ratification of the Lisbon Treaty would lead to a more homogenous and stricter data protection regime and bring in the European Parliament as co-legislator on all data protection/privacy decisions taken in Brussels. This could enable the EU to broaden and deepen its data protection legislation while at the same time open new avenues for influencing legislation via the European Parliament.

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