

Report of Privacy Issues workshop held at ICL, Strand London WC2 on 13th June 2001

A wide range of topics was reviewed at a well attended meeting, and this paper summarises the principal comments made.

Internet Privacy Statements

The lack of good privacy statements was seen as one of the barriers to the wider take-up of electronic trading. It was not easy to create statements that were both succinct and correct. In general there was too much cross referencing to codes on other sites. The few privacy statements that did hit the mark could be an effective marketing tool, although they were not the prime determinant of whether or not an individual was willing to trade on-line. A recent US survey had indicated that many companies were not actually following their own statements. There were, though, bodies with power to fine those who did not abide by the codes stated on their websites. This type of enforcement was unique to the USA

Information Sharing

There was a need in terms of government systems to look at consumer protection and data protection together. There was concern about differences between the interpretation of the DPA by the Information Commissioner's Office and the approach taken by other government departments. Data protection concerns could be a major barrier to modernising government, resulting in large parts of the programme being undeliverable. Life-event notification through UK online will work only if data can flow out from it through all channels, but there was a major difficulty in that government data systems were not currently set up to record where and when consent had been given. This would not change until legacy systems were replaced and appropriate smart cards were in general use.

Citizens should at all times feel that they are in charge of information about themselves and can change it when necessary. Provided proper explanations were given, the concept of express consent could be built into the routines enabling joined up government. There had to be express consent, however, rather than merely opting out.

Some Local Authorities had been advised that they could not transfer personal information obtained under one statute for use in areas governed by a different regulation. The Commissioner's view, however, was that this was proper provided the individuals concerned were written to and given an opportunity to refuse consent. A problem for the UK is the fact that the terms "express" and "implied" consent are upon to judicial interpretation. There were difficulties in detail in that a practical and efficient way of doing this online might not match the off line situation.

On a broader issue there seemed to be value in creating glossaries of definitions for use in drafting Directives instead of new terms being created each time data protection issues were to be included. When clauses were added at a late stage with the intention of giving added protection they could undermine the whole purpose of the regulations.

RIP Implementation

The Home Office representative reported on progress to date. The main focus of interest at present related to data retention about which there was considerable lobbying both in the UK and more generally in Europe where there were concerns on data preservation as part of CSP transactions. It was felt there was a need to distinguish between retention in the sense of keeping track of particular items and the Data Protection Act requirements in this regard. It was important that debate on this topic involved all the relevant players since industry was faced with conflicting regulatory requirements which it did not know how to reconcile. It was noted that the Irish government had decided to avoid any legislation in this area because of the harm to their business community and it was suggested that in the UK the Home Office had over indulged and thereby harmed the economy. A better balance was required.

There was some confusion as to whether or not the DPA requirement absolutely prevented certain types of retention. For instance, it had no competence in areas of national security and de-anonymising certain classes of data was necessary for the detection and prevention of crime.

The Council of Europe Communication on Cybercrime was due for ratification at the end of the year and it was important to see whether that had legislative implications. There was a need to see that legislation did not get over prescriptive and in particular to see that data protection requirements remained proportionate.

Action: to include this topic in discussion with MEPs and to have meetings in both London and Brussels, not least to ensure that the debates in both places were indeed on the same subject.

Contracts

There was puzzlement as to why a new directive was considered necessary. It seemed to stem from the Commission's view that the provisions of Article 26 could not be relied on in relation to third party contracts. This was at variance with legal principles and contractual details such as "joint and several". Getting contracts sorted out was generally regarded as a business problem, not one for legislation. Some contracts would always be better than others

Action: ask MEPs to find out why this approach was taken by the Commission.

Safe Harbour was still thin on the ground because of reluctance to sign up as a result of the severity of penalties for lapses. If the response did not improve it might be abandoned.

For individual businesses it was no use waiting for measures of this type to kick-in. They had to use what was already available. Many draft contracts were currently being prepared but considering them was putting a large load onto the Commissioners of Member States. A measure of co-operation was required.

Employee/Employer Codes

Following the consultation on the first draft, these codes had now been broken down into four separate parts. Most of the responses related to surveillance and redrafting this was helped by the existence of the DTI work.

Concerns

Those present were asked to indicate the areas causing them most concern at present and the following list of topics emerged to be taken forward for further consideration by the group:

Data protection audits.

Retention.

Data sharing issues (to be linked with Modernising Government theme).

Definitions.

Network security.

Data protection standards.

Other concerns mentioned:

Transfer of data to third countries.

Third party transfers.

Notification to customers where one or two steps removed – making sure the chain works.

Definition of medical research – where there were special retention issues.

The Telecomms DP Directive – especially implications for CSPs.

Opting-in.

Clarification re barriers.

Battle between the desire for personal services and the desire for privacy.

Balance for individuals between service availability and exploitation/meddling by the powerful.

Location data and public concerns – are there specific data protection issues?

Crime prevention concerns

Timescales for regulation.

Over-arching issue of too much legislation in the area.