

Increasing penalties for deliberate and wilful misuse of personal data



Response to DCA Consultation paper CP 9/06
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EURIM is a UK based Parliament-Industry Group founded in 1993. The membership is listed on www.eurim.org.uk and includes over a hundred members of the UK and European Parliaments and over fifty corporate members, trade associations and professional bodies.

EURIM was publicly launched in 1994. Its first study was on the proposals that led to the EU Data Protection Directive. Since then the world has moved on. Unauthorised copying and sale of personal data is the start point for millions, possibly even billions, of pounds of systematic fraud and abuse within the UK, let alone around the world. Hence the very strong support of EURIM's Corporate and Associate members for rapid implementation of the recommendations in the Information Commissioner's recent report to Parliament: "What Price Privacy? The unlawful trade in confidential personal information"

The responses of the Corporate and Associate members consulted in the course of assembling this response can be summarised to the questions posed are:

Question 1.

Do you believe that custodial penalties should be available to the court when sentencing those who wilfully abuse personal data (i.e. knowingly or recklessly, obtain, disclose or seek to procure the disclosure of such data without the consent of the data controller)?

YES

They engaged in such abuse may well be active in criminal supply chains that lead to fraud and extortion and support terrorist activity, whether or not they are themselves engaged in other criminal activities. Current penalties are clearly no deterrent to such individuals or their employers.

Question 2.

Do you agree that custodial penalties will be an effective deterrent to those who seek to procure or wilfully abuse personal data (i.e. knowingly or recklessly, obtain, disclose or seek to procure the disclosure of such data without the consent of the data controller)?

YES

Provided they are backed up by use of the proceeds of crime act for those who are doing supplying information on a commercial basis, sometimes on a large scale. Incarceration will also disrupt the activities of those who may also be engaged more serious, but as yet unproven, criminal activity (e.g. those providing information to aid terrorist targeting).

Question 3a

Do you agree that the custodial penalties are of the right length?

Most of those consulted believe they are adequate. Given the international nature of the offences (e.g. the trade in information harvested from call centres overseas as well as those in the UK) it is important that the offence be extraditable.

Question 3b

If not, why not, and what do you suggest should be the maximum custodial penalty available to the courts (a) on summary conviction and (b) on conviction on indictment?

A minority of those consulted believe that the maximum should be five years not two. The majority believes this unnecessary provided any custodial sentence is complemented by robust use of the powers for unlimited fines when the offence is linked to significant revenue earning activities and by subsequent additional prosecutions if/when links to more serious crimes can be proved.

Question 4

Do you agree that a guideline issued by the Sentencing Guidelines Council is necessary for this offence in England and Wales?

Those consulted are divided on the value of such guidelines. There is, however, concern at the failure to use existing powers for unlimited fines and a view that custodial sentences should be complemented by very substantial fines and action under the Proceeds of Crime Act to send the necessary message of deterrence to those running multi-million pound operations supplying personal information to third parties.

Other Points

1) We believe the "Partial Regulatory Impact Assessment" seriously understates the benefits. The public will not have confidence in government plans to reform the delivery of public services using new technologies unless action is taken to provide for realistic penalties for those (including staff, contractors and sub-contractors) abusing information in the databases needed to support those files.

This legislation is therefore both urgent and important

2) The Office of the Information Commissioner will need significant resources, including to aid international co-operation, if it is to tackle some of the major criminal players in this space (for whom the UK is currently a safe haven). It is therefore essential that it be enabled to use funds received under the Proceeds of Crime Act 2002, to enable an expansion of its enforcement activities.

Drafted by Philip Virgo, Secretary General, EURIM 20th October 2002