



Privacy: from regional regulations to global connections?

A background paper for a workshop co-organised by the Council of Europe and the Internet Society at the Internet Governance Forum in Bali, Indonesia (22-25 October 2013).

Introduction

The Internet dissolves geographical boundaries on a greater scale than any prior invention. It allows data, personal and otherwise, to flow across borders, supporting social and economic interactions. However, there is a complex mix of factors at play: multiple policy objectives that are sometimes in conflict: individuals' rights; the interests of the communities; "monetisation" of personal data for short-term and long-term commercial gain; different historical cultural and regulatory approaches to privacy; etc.

Across a diverse, global Internet, how can we best deal with the tensions that naturally result from differences in personal privacy expectations, economic aspirations and regulatory regimes, particularly when it comes to online data protection?

Context

In 2009, the 31st International Conference of Data Protection and Privacy Commissioners produced a Joint Proposal for a Draft of International Standards on the Protection of Privacy with regard to the processing of Personal Data ("the Madrid Resolution"). In 2010, the 32nd Conference adopted a Resolution calling for the organisation of an intergovernmental conference with a view to developing a binding international instrument on privacy and the protection of personal data.

In 2012, the Council of Europe released proposals for the modernisation of Convention 108ⁱ and has recently set-up an intergovernmental committee gathering both European and non-European countries, as well as non-state actors, in order to finalise the modernisation process.

The European Commissionⁱⁱ "proposed a major reform of the EU legal framework on the protection of personal data" in January 2012 that would "... strengthen individual rights and tackle the challenges of globalisation and new technologies". The Commission's proposals have been extensively discussed both at the level of the European Parliamentⁱⁱⁱ and the Council of the European Union^{iv}, and will continue to be discussed during the autumn with a view to reaching consensus on the texts to be adopted.

In 2011, the Organisation for Economic Co-operation and Development^v (OECD) published "The Evolving Privacy Landscape: 30 Years after the OECD Privacy Guidelines" plus terms of reference for the review of OECD Guidelines. The results of the review of the OECD Privacy Guidelines were submitted for final adoption to the July 2013 Ministerial Council of the OECD.

The Asia-Pacific Economic Cooperation (APEC) adopted the APEC Cross Border Privacy Rules System^{vi}. In 2012, the UN Educational, Scientific and Cultural Organization (UNESCO) released a "Global survey on Internet privacy and freedom of expression"^{vii}. The African Union is developing a draft convention, which includes provisions concerning data protection^{viii}.

Further, at the national level, many countries^{ix} introduced new privacy laws or proposed changes to their existing legal frameworks.

Exploration

This Workshop will strive to articulate lessons learned from these and other initiatives presently underway across the world to review, modernise and/or develop new approaches to privacy to keep pace with the evolving global data environment, as well as the related work happening in other spheres – business, technical, academic, civil society, users etc. – aimed at providing better solutions and guidance for online privacy.

We will explore what core principles and strategies are needed to achieve a balanced and fair approach to data protection that is effective internationally and regionally. In the process, we will examine the possible paths to a global solution, together with impediments, and explore how successful local and regional approaches could be leveraged at the international level.

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ⁱ http://www.coe.int/t/dghl/standardsetting/dataprotection/modernisation_en.asp

And 'Modernising' Data Protection Convention 108: A Safe Basis for a Global Privacy Treaty? by Pr. Graham Greenleaf,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262296

ⁱⁱ http://ec.europa.eu/justice/data-protection/index_en.htm

ⁱⁱⁱ <http://www.europarl.europa.eu/news/en/pressroom/content/20130502BKG07917/html/QA-on-EU-data-protection-reform>

^{iv} : the Presidency Report to the Justice and Home Affairs Council (10227/13 of 31 May 2013); <http://register.consilium.europa.eu/pdf/en/13/st10/st10227.en13.pdf> and the Addendum to Report (Work in progress on Chapters I to IV); <http://register.consilium.europa.eu/pdf/en/13/st10/st10227-ad01.en13.pdf>

^v www.oecd.org/sti/privacyreview

^{vi} <http://www.apec.org/Groups/Committee-on-Trade-and-Investment/Electronic-Commerce-Steering-Group.aspx>

vii <http://www.unesco.org/new/internet-privacy-and-foe>

viii <http://au.int/en/cyberlegislation>

ix Global data privacy in a networked world, by Pr. Graham Greenleaf,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954296