



Big Brother Watch response to:

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGION

15 January 2011

Consultation submission at:

http://ec.europa.eu/justice/news/consulting_public/news_consulting_0006_en.htm

The 1995 Data Protection Directive put forth two important ideas on personal data, namely, that individuals have rights and freedoms especially associated with personal data protection and that there should be free flow of personal data within the common market. However, rapid technological change has opened up a whole new set of data protection challenges.

The 2009 consultation had a number of findings from its submissions. These findings included:

- Addressing the impact of new technologies
- Enhancing the internal market dimension of data protection (and providing for a disconnect between member states and their policies and the EU)
- Addressing globalisation and improving international data transfers
- Providing for a stronger institutional arrangement for the effective enforcement of data protection rules
- Improving the coherence of the data protection legal framework

In light of the above issues, the requirement for the EU to develop a comprehensive and coherent approach to the fundamental right to data protection is clearly required and a Comprehensive Approach on Data Protection has been put forth as an update to and strengthening of the 1995 Data Protection Directive.

Big Brother Watch is submitting a response to the European Commission's communication on the Comprehensive Approach on Data Protection and our response is below.

1. Strengthening of individuals' rights

Big Brother Watch supports the idea that an individual should have all rights to their personal data. We would encourage that the EU look at an opt-in rather than an opt-out recommendation on websites and by data collecting agencies online. This guarantees that an individual would be aware of the data collection happening. Indeed, the Commission may wish to apply a similar principle to the logging of personal data as applied by former Consumer Protection Commissioner Kuneva towards the outlawing of pre-selected boxes on airline websites. Before the ban on websites 'pre-selecting' boxes ordering insurance products or "speedy boarding" products, many consumers had only found out at a later stage that they had purchased these products without their prior knowledge. Such a ban on the 'pre-selection' of tick-boxes pre-approving the sharing of personal information may assist in the objective of strengthening individuals' ability to protect their own data.



2. Transparency

We support the idea of transparency as it relates to data protection and individual rights. Transparency is the key to any industry where consumers are adopting new technologies wholesale. However, we would encourage the EU to adopt obligations and standard forms on a recommendation basis only so that different online industries can innovate and find new ways to inform customers of their data collection. Industry standards should become the norm around data privacy communications.

3. Enhancing control over one's own data

We support and encourage the 'right to be forgotten' and the right for an individual to ask for and require their own personal data to expire or be removed from an online service, as they deem necessary. However, we hope that through the various issues that have arisen over the last year, a number of companies have learned to deal with data protection. The user of a service should be aware of what they are signing up to while a service should be clear in their terms of service. And contracts should be enforced when necessary.

From our experience, consumers can often find the process of removing their data from websites such as the UK-based 192.com telephone directory service frustrating and complicated. The Commission should encourage, as an example of 'best practice', websites storing data to display information about how to 'opt out' from their databases in a prominent position on their web pages.

4. Raising awareness

Big Brother Watch supports raising awareness about data protection issues, and we hope that we have contributed to an increase in awareness. The Article 29 group may wish to conduct a review as to how consumers can be better informed of how their data will be stored, used and propagated at the time of submission i.e. notifications on data capture forms, the aforementioned ban on the 'pre-selection' of tick boxes etc. We do not, however, support the use of European taxpayers' money to fund such campaigns. Rather, we hope that companies and individuals alike take it upon themselves as a voluntary obligation to contribute to the activities of data protection education.

5. Ensuring informed and free consent

Big Brother Watch supports the idea of informed consent and opt-in rather than opt-out services that use personal data. The principle of subsidiarity is, however, key and would oppose any supranational legislative efforts in this respect. We feel strongly that individual member states should be able to enforce consumer protection laws with enough strength that additional legislation on this matter is not needed at an EU level.

6. Protecting sensitive data

We support the protection of sensitive data as an individual deems it necessary to not give or remove altogether their personal information from a website or service. Currently, any individual who wishes to do so can do if they request so. Further EU regulation may cause confusion or undermine the efforts of member states in this field, many of whom have vastly different levels of internet penetration.



7. Making remedies and sanctions more effective

We support the rule of law and encourage all who feel that their rights have been breached take their issue up through legal means. Current sanctions in the UK are enough to support personal data protection and no additional EU level sanctions are necessary.

8. Increasing legal certainty and providing for a level playing field for data controllers

While Big Brother Watch supports data harmonization, it should ideally be done by industry and not by the EU. Industrial standards groups formed of companies whose business is data delivery and data management should meet and decide on best practices in terms of data standards and delivery world wide. The Commission, working with the European Parliament, should continue to play an active role as a stakeholder in this field; sharing best practice and maintaining an ongoing dialogue with the business community about data protection issues.

9. Reducing the administrative burden

The current processes and notification procedures under the Data Protection Authorities is cumbersome, but the data processing and delivery industry should agree upon an universal standard and they should also come up with a universal registration form that fits their own needs. Industry standards should inform the EU of their progress and agreements.

10. Clarifying the rules on applicable law and Member States' responsibilities

Big Brother Watch feels strongly that while different laws apply in different territories, it should be the agreement of the companies involved and not the EU to clarify rules across territories. The music and film industries both operate under similar disconnected rules across territories within the EU and internationally, however, music companies and musicians are meeting and seeking better agreement on how to license and manage music across the world. Data companies should be encouraged to do the same first and then resort to the EU for rules clarification as a last resort.

11. Enhancing data controllers' responsibility

We support the idea of 'Privacy by Design' and strongly encourages the data controllers assume responsibility for industry best practices and actions. We would support a 'hands off' approach from the Commission to allow controllers come up with innovative solutions.

12. Encouraging self-regulatory initiatives and exploring EU certification schemes

Big Brother Watch strongly supports and encourages self-regulatory initiatives and would encourage industry standard over EU certification schemes. Similarly, Big Brother Watch would welcome any technical assistance the Commission is able to offer to both recent accession states and candidate countries in strengthening their data protection laws. Big Brother Watch would recommend that a particular focus in this respect is directed towards Croatia and Macedonia – states at the conclusion of and commencement of EU accession negotiations respectively.

13. Revising the data protection rules in the area of police and judicial cooperation in criminal matters



Big Brother Watch recognizes the European Union’s existing competences in relation to the “area of freedom, security and justice”. Big Brother Watch is concerned over the use and potential mis-use of personal data in the name of anti-terrorism or public safety and would encourage careful consideration of personal data in criminal cases and across country borders. In cases where a member state has significant concerns about a) standards of data protection or b) the judicial integrity of another member state, a respective national minister should be able to place either a block or conditions on the transfer of sensitive information.

14. Clarifying and simplifying the rules for International data transfers

We would encourage the use of user notification with an option for opting-out first and foremost as the best way to deal with international data transfers. An easing of burdensome regulation along with industry standards should be in place before any additional legislation is considered.

15. Promoting universal principles

Again, universal standards from the industry should inform and promote universal principles above and beyond any International directives.

16. A stronger institutional arrangement for better enforcement of data protection rules

While the use and strengthening of Data Protection Agencies is a good step, Big Brother Watch again would encourage the data collection and data using industries to be the key driver on all of these issues and the potential legislative outcome.

Conclusion

Big Brother Watch is pleased to see that EU and EC are rethinking the role the data plays in today’s society.

Data protection is of the utmost importance to an individual and it is the individuals responsibility to be aware, informed, and in control of their own data. It is also the responsibility of the data collection and other related industries to manage and deal with data in a way that protects consumers and their rights.

We would encourage self-regulatory industry standards across all areas of data collection and protection and we would hope that these standards would be upheld by the rule of law on a national and international level. Therefore, we would encourage the EU and EC to seek solutions from the industry itself first and use additional, legislative measures only as a last resort.

Where the European Commission does conclude legislative measures are required, we would urge that the desire to apply uniform standards across the internal market is balanced with the need to safeguard the principle of subsidiarity.

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