## Summary of Article 29 Data Protection Working Party Opinion 03/2013 on purpose limitation 00569/13/EN WP 203 adopted April 2, 2013

**Importance**

This is a fundamental document wherein the WP traces the legal history of the concept of purpose limitation in data protection, from the European Convention on Human Rights (1950), through the Convention 108 to the Directive 95/46 and the then current discussions on the new data protection regulation. It also analyses the way in which other fundamental concepts in data protection, such as legal basis, reasonable expectations of privacy, fairness, incompatible use, etc. interact with purpose limitation. In particular, it spells out the framework for analysis of purpose specification, namely that collection must be for specified, explicit and legitimate purposes. While prepared to enlighten the discussions on the impending regulation, it is a summary that is extremely useful to our work as it sheds light on the thinking behind the many letters and opinions from European data commissioners, which ask ICANN what is the purpose of data collection in the RAA and disclosure in the WHOIS.

**History**

1950 ECHR article 8 incorporates right to privacy. Interference with right to privacy must be in accordance with law, necessary in a democratic society, and for a specified purpose (in order to judge whether interference is necessary). These principles became cornerstones of EU data protection law.

1973 Resolution (73)22 information must be appropriate and relevant re purpose for which it was stored, prohibits use for purposes other than that for which it was stored and for communication to third parties.

1974 Resolution (74)29 For public sector, purpose can be changed if “explicitly permitted by law, is granted by a competent authority, or the rules for the use of the electronic data bank are amended.”

1981 Convention 108 introduces concept of protection of personal data. Purpose limitation becomes essential principle. Article 5 sets out fundamental principles of data protection law, including lawfulness, fairness, proportionality, purpose specification and that purpose be legitimate. Also introduces incompatibility. Article 9 sets out derogations, which must be provided for by law, and necessary in a free and democratic society. Purpose limitation also in OECD Guidelines, subsequent use for different purpose only if compatible.

Directive 95/46/EC

Public and private sector use not differentiated, so purpose specification requirements apply equally. Added that purpose must be explicit. Further processing for historical, statistical or scientific purposes not incompatible provided safeguards (eg. anonymization) are employed. States may restrict this principle in order to safeguard certain important interests if restriction is necessary. Review has found that states have implemented/interpreted this principle somewhat differently, leading to different approaches and some confusion. Test to determine incompatibility of purposes varies from “reasonable expectations” of the data subject to application of balancing tests, or other tests (eg. fairness, lawfulness, transparency).

2000/2009 European Charter of Fundamental Rights. Data protection becomes a fundamental right, distinct from privacy, and to be administered by an independent authority. Data must be processed “fairly for specified purposes” and there must be a legitimate basis for processing (by law) or with consent.

**Purpose Specification**

Article 6(1)(b) of the Directive: data collected only for “specific, explicit and legitimate purposes”. Purpose specification determines the data to be collected, retention periods, and all other aspects of how data is processed. Must be determined prior to or not later than collection. Each separate purpose should be specified in enough detail to be able to assess whether collection of personal data complies with law, and what safeguards are necessary.

Explicit means unambiguous, as opposed to hidden purposes. All parties (data controllers and their staff, data processors, data protection authorities and data subjects) must all be able to understand all purposes.

Legitimate is further defined in Article 7, which lays down 6 different legal grounds for data processing. However, for a purpose to be legitimate, it must also be in accordance with all provisions of applicable data protection law, as well as other applicable law such as employment law, contract law, consumer protection law, etc.

**Framework for Compatibility Assessment**

Any processing following collection (eg. storage, disclosure in WHOIS) is further processing, and must meet the requirement of compatibility. The law uses the double negative (must not be incompatible). A change of purpose therefore may be permissible, providing it passes the compatibility test. Factors include:

1. Relationship between the purpose of collection and the purposes of further processing
2. Context of collection and reasonable expectations of data subjects re further use (includes concept of knowledge of data processing ecosystem)
3. Nature of the data and impact of further processing on data subjects (is it sensitive data, is use excessive)
4. Safeguards applied by data controller to ensure fair processing and prevent undue impact on data subjects (eg. anonymization, opt out, technical measures, PETS)

**Consequences of incompatibility**

Legalizing an otherwise incompatible data processing activity simply by changing the terms of a contract with the data subject, or by identifying an additional legitimate interest of the controller, would go against the spirit of the purpose limitation principle and remove its substance.

**Exceptions under Article 13**

Article 13 of the Directive provides that “Member states may adopt **legislative measures** to restrict the scope of the obligations and rights provided for in Article 6(1) …when such a restriction constitutes a necessary measure to safeguard ….national security; defence; public security; the prevention, investigation, detection, and prosecution of criminal offences, or of breaches of ethics for regulated professions; an important economic or financial interest of the Member State of the European Union …; a monitoring, inspection, or regulatory function …and the protection of the data subject or of the rights and freedoms of others. [emphasis added].

In order to understand the basic concepts of how data protection law is being interpreted with respect to registrant data, this document is useful as it explains how the concepts interrelate.