

Summary of the Cross-Community Discussion with
Data Protection Commissioners held on 13 March 2017 at ICANN 58

GB	Giovanni Buttarelli	European Data Protection Supervisor
JC	Joseph Cannataci	United Nations Special Rapporteur on the Right to Privacy
CG	Caroline Goemans-Dorny	Data Protection Officer, INTERPOL
JK	Johannes Kleijssen	Director, Information Society and Action Against Crime, Council of Europe
WT	Wilbert Tomesen	Deputy Chairman, Dutch Data Protection Commission

Privacy and data protection is global:

- 120 countries are now equipped with privacy and data protection provisions. Countries have largely departed from a system of self-regulation. While some principles are named differently, there are a lot of similarities between these laws. (GB, JC, JK, CG)
- “Both privacy and data protection are considered [under] many laws in the world as a prerequisite for benefit[ing] from other fundamental rights and freedoms, including freedom of expression, the right to personal identity, and more recently, dignity.” (GB)
- “Businesses expect the ability to do business across the globe, and citizens out there expect to have their personal data safeguarded across the globe and with safeguards in place without borders and with remedies available across borders.” (JC)

It should not be seen as a European concept:

- Data controllers should not fragment their policies depending on the territory. (GB, JC)
- “This is not an E.U. versus U.S. problem. This is a global [issue]. It would serve in reinforcing trust and confidence in the Internet. We are flexible enough to make this principle effective in practice. We would like to depart from formal requirements. We would like to focus on effective safeguards. And I think that, all in all, we are all on the same side.” (GB)
- “The major treaty on data protection is Convention 108. And Convention 108 is open for signature to countries across the world. Uruguay has signed it. Tunisia has signed it. And another ten countries are now observers. And it is that convention [not the European Union’s GDPR] which has actually provided the standard with which more than another 100 countries around the world have followed.” (JC)

Rather, consider it akin to good governance principles:

- “Privacy principles and the derived data protection principles are in fact just good governance principles. Why do you process? Purpose. What do you process? Accuracy. On what basis do you process? Legitimacy. How do you process? Transparency. How do you comply? Oversight mechanism.” (CG)
- “Interpol would not exist today if it hadn’t put into practice data privacy principles back in 1982... The strength of global privacy principles lies in the fact that they have universal outreach and that they are bridging gaps. Gaps between the difference in legislation, in business processes, and that they create a sort of interoperability that makes things happen. (CG)

Data should only be obtained for specified and lawful purposes:

- When a domain name is registered, the person registering the domain name must understand in advance where his/her data will go. Purposes must be specified, explicit, clearly expressed, and sufficiently unambiguous. (WT)
- “The purpose of the WHOIS directories cannot be extended to other purposes just because they are considered desirable by some potential users of the directories.” (GB)
- Data subjects have the “legitimate expectation that their personal data will only be processed for legitimate purposes and not be used further or kept any longer than strictly necessary for that purpose. That means that personal data shall be processed lawfully, fairly, transparently.” (WT)
- “The mere fact that personal data is available in a register does not make it legitimate to use that data for other purposes just because it is useful. In order for ICANN to have a legal ground for publishing personal data, the publication must be necessary, and proportionate. And publication does not outweigh the privacy interest of users.” (WT)

Even if a purpose is legitimate, is it excessive?:

- “Is there any other less intrusive method compared to mandatory publication that would serve the purpose of the WHOIS directories without all data being directly available online to everybody?” (GB)

Has valid consent been obtained from the data subject?:

- “Why is an Internet domain name registry to be treated differently compared to telecom directories when an individual registers a domain name? There should be the right not to be included in a register.” (GB)
- “Is there any need to make identifiable a contact person? Do we really need to have an identified individual as a contact person? And are they properly informed about the publication of this data? Do you have a robust policy with regard to secondary purposes, particularly with regard to direct marketing?” (GB)

There is demonstrated consumer harm arising out of WHOIS:

- “We at the Data Protection Authorities have received over the years a steady amount of complaints from people about the public availability of their personal contact details through the WHOIS.” (WT)

Data controllers have responsibilities:

- “We would like to have more accountable data controllers. Controllers should do more homework and identify a sustainable policy, have an answer to different problems, identify relevant risk, allocate responsibilities, demonstrated [they] comply with the law and [they] have a suitable policy.” (GB)

Publication of data:

- “Third-party access can only be granted as a rule if it’s for a specific purpose; in other words, protecting state security, public safety, the monetary interests of the state, or the suppression of criminal offenses. And when doing so, it can’t just be willy-nilly, when doing so it must be done in the context where there is a law, it’s provided for by law, and that law must provide appropriate safeguards.” (JC)
- “The data you process, [and make] publicly available, should be adequate, relevant, and limited to what is necessary in relation to the purposes to which that data is processed.” (WT)

Enforcement for violations of data protection laws:

- “We are here today as problem solvers, not as problem seekers and not as enforcement bodies. But in 14 months we will have to start with enforcement. And differently from 20 years ago, enforcement is now based on serious fines.” (GB)
- “Data Protection Authorities, by the way, are granted with substantial penalizing powers. But, ladies and gentlemen, that’s going to be my last word.” (WT)

— *Notes by Ayden Férdeline*