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WIPO-ESCWA/EC/BEY/ 03/Doc. 5b

ORIGINAL: English

DATE: April 2003



LEBANESEREPUBLIC



UNITEDNATIONSECONOMIC
ANDSOCIALCOMMISSIONFOR
WESTERNASIA(ESCWA)



WORLDINTELLECTUAL
PROPERTYORGANIZATION

**WIPO-ESCWAARABREGI ONALCONFERENCEON
INTELLECTUALPROPERT YANDELECTRONICCOM MERCE**

organizedby
theWorldIntellectualPropertyOrganization(WIPO)
and
theUnitedNationsEconomicandSocialCommissionforWesternAsia
(ESCWA)

incooperationwith
theMi nistryofEconomyandTrade

Beirut,May 7and 8, 2003

SECURITYANDPRIVACYONTHEINTERNET

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EU Data Protection Legislation

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The data protection presentation is based on the input of
Covington's privacy lawyers (H. Tielemans and J. Albert)

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EU Data Protection Legislation

- Framework Data Protection Directive (95/46/EC)
 - Implementation Date : October 1998
 - Implemented in all EU Member States with the exception of Ireland and France
- Electronic Communications Data Protection Directive (2002/58/EC)
 - Implementation Date : November 2003

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EU Data Protection Legislation

- Framework Directive
 - Aims to ensure the free flow of personal data within the EU and to protect fundamental rights and freedoms of the data subject (right to privacy)
 - Protection is reflected in :
 - Obligations imposed on controller (relating to data quality, technical security, notification to a supervisory authority and in general the circumstances under which processing can take place)
 - Rights conferred to data subject (relating to obtaining information, consult, request corrections and object to processing)

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EU Data Protection Legislation

- Data must be adequate, relevant and not excessive for the purpose(s) for which they are collected
- Controller must have data subject consent or claim a need to:
 - Perform a contract with the data subject
 - Comply with a legal obligation
 - Protect the data subject's vital interests
 - Process for legitimate business purposes

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EU Data Protection Legislation

Compliance Issues

- Companies collecting data across the EU face many compliance challenges
- Implementing laws are lengthy and complex
- Challenging jurisdictional issues
- Diverging interpretation among various DPA's

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EU Data Protection Legislation

Definition of Personal Data

- Defined as : any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified directly or indirectly, by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity

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EU Data Protection Legislation

Interpreted differently throughout the EU
Interpreted too broadly

One example: IP addresses

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EU Data Protection Legislation

IP addresses

- Article 29 Working Party: personal data towards all parties concerned
- Assumption that if an IP address is identifiable by one company, e.g. an ISP, it is personal data for all companies concerned
- ISPs generally do not divulge IP accounts
- May diminish privacy and thus have the precise opposite effect

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The New ECDP Directive

- Directive contains new rules on
 - Traffic data
 - Cookies
 - Directories
 - Unsolicited commercial email
- A number of interpretive issues are raised by these provisions
- Issues may be clarified by national legislation, but not necessarily

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Directories

- Subscribers must be given opportunity, free of charge, to determine which data requested by service provider are published in directory
- Applies only to subscribers, so only covers directories published by service providers
- What rules will apply to third party directories?
 - Data Protection Directive
 - Member States can require additional consent for all directories if searches possible on basis other than name

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Unsolicited Commercial Email

- Opt-in, except emails to existing customers marketing company's own similar products or services
- Tightening of rules in some Member States, liberalization in others
- Who is an existing customer?
 - Contact details must be obtained in context of sale of product or service
 - Can “free” services imply a remuneration?
 - If so, what is a service – does visiting a website count?

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Thank you

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