
Consumer Privacy Rights

Introduction:

Since the Transatlantic Consumer Dialogue's launch in 1998, consumer privacy has become one of the top issues on the political agendas in both Europe and the United States. Concerns about the adequacy of consumers' privacy rights are heightened by the unprecedented and unchecked intrusion into people's personal information for commercial purposes and by increasingly far-reaching government surveillance practices.

In the digital world consumers are subject to far more invasive and ubiquitous data gathering by businesses and government than ever before. Unregulated data brokers mine and sell consumers' personal information for commercial purposes and government surveillance. Behavioural profiles based on tracking consumers' online activities is used for marketing and other purposes without consumers' knowledge or consent. These personal profiles can be further enhanced by information gleaned from consumer use of mobile devices or products connected to the "Internet of things". Consumers' travel information is compiled and kept for long periods of time to be available to law enforcement agencies. In the U.S. credit scoring and credit reports are no longer limited to use by financial institutions or to make decisions on extending credit to consumers. Insurance companies use credit scores to determine risks of insuring a consumer against physical or property damages or losses. Landlords evaluate tenants based on credit scores. And employers are legally allowed to use credit reports in most states to make hiring decisions. Furthermore, business consolidation is enabling a few large entities to accumulate vast amounts of individual data and to use their dominant position and detailed knowledge of users to undermine competition and discourage innovation.

The TACD has adopted many policy resolutions related to privacy over the years ranging from e-commerce practices to RFID, passenger name records to behavioural targeting. In light of recent privacy developments on both sides of the Atlantic, TACD has prepared this document to provide a set of specific recommendations for how the EU and the U.S. can move forward to ensure strong and sensible privacy protections.

New EU and U.S. Consumer Privacy Protection Proposals:

In January 2012, the European Commission proposed comprehensive reform of existing consumer data protection laws. A new proposed EU law would regulate how personal data can and cannot be used by companies when consumers shop, email, use social networks, etc. The law would apply to all companies doing business with EU consumers, and even if they are located outside the EU territories. In addition to the existing 8 data protection principles, the proposed law includes additional benefits for consumers, such as greater 'transparency', a 'data breach notification', a new right to 'data portability' and introduction into legislation of 'privacy by design' and 'privacy by default'. There is a provision for individuals to seek redress for breaches or be representation by consumer organisations.¹ A new proposed Directive will apply general data protection principles and rules to

¹ http://ec.europa.eu/justice/newsroom/data-protection/news/120125_en.htm

processing of personal data for the purposes of prevention, detection, investigation or prosecution of criminal offences.

While the U.S. has for many years regulated government collection, retention and use of personal information, commercial data collection and use has been largely unregulated except in certain narrow sectors such as health care providers, schools, video rental shops, and financial institutions. In February 2012, the U.S. Administration released a white paper, “Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy.”² The paper features “A Consumer Privacy Bill of Rights” which consists of seven principles: individual control, transparency, respect for context (of the collection), security, access and accuracy, focused collection (minimization), and accountability. The administration is also planning to convene multi-stakeholder meetings to develop voluntary industry codes of practice to address specific privacy concerns.

Recommendations:

Bridging EU and U.S. Consumer Privacy Rights and Protection

The United States’ new commitment to broad consumer privacy protection, along with the European Union’s longstanding leadership in this area, reflects a promising bilateral concurrence that could help protect the public in the digital era. Cooperation between the U.S and the EU is crucial to ensure personal freedom, societal welfare, economic growth, and innovation.

We therefore urge the U.S. and EU governments to bridge the gap even further by implementing the following recommendations:

- a) The U.S. should seek congressional enactment of the Consumer Privacy Bill of Rights, clearly establishing these rights in law. In the absence of legislation, the U.S. cannot offer the EU any assurance that there will be adequate protection for the personal data stored or used by U.S. companies. In addition, any multi-stakeholder process that the U.S. initiates to develop voluntary industry codes of conduct for privacy should be aimed at encouraging commercial entities to implement the principles described in the Consumer Privacy Bill of Rights.
- b) The U.S. should ratify the Council of Europe (COE) Convention 108. This convention supports innovation and user privacy rights and is a widely recognised global instrument, adopted by 43 countries. As the U.S. previously urged other countries to adopt the COE Cyber-crime Convention, the U.S. should now ratify the COE Privacy Convention.
- c) The EU should implement a strong new privacy law and EU member countries should engage in effective enforcement.
- d) The EU and U.S. should continue to promote building security and privacy protection into technology and its applications—often referred to as “Privacy-by-Design” —and to activate this protection by default.
- e) The EU and U.S. should encourage development of enforceable global guidelines for online consumer advertising and sales promotions.
- f) Regulations regarding direct marketing to children should establish age limits and business practices to enforce privacy rights that provide a full set of privacy protections with particular enforcement attention given to limit data collection in extent and to their purpose as well as data retention limitation.
- g) The EU and U.S. should adopt uniform certification schemes that may include standards and regulations for privacy and security enhancing technologies. Enhancing the scope of regulatory authorities (NRAs) to enforce consumer protection rights that providing incentives innovation in the security of systems that support privacy enhancing technologies.
- h) The EU and the U.S. should develop and deploy systems to alert each other, share information, and cooperate on enforcement action to protect consumers from illegal privacy practices.
- i) EU and U.S. regulatory authorities should work collaboratively to independently verify that consumers’ privacy rights are properly protected under the U.S.-EU Safe Harbor Privacy Principles. In fact relevant sanctions have to be applied in case of breaches of the Safe Harbor agreement.

² <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>

List of TACD policy statements related to Privacy and Data Protection

In reverse date order:

- TACD Resolution: Protecting Privacy in a Hyper-local World 5 June 2012
- TACD Resolution: Internet of Things 5 June 2012
- TACD Resolution on Behavioral advertising³ 21 June 2011
- TACD cloud computing resolution⁴ 21 June 2011
- Resolution on Privacy and Security Related to Smart Meters⁵ 21 June 2011
- Revised Resolution on Social Networking⁶ 5 May 2010
- Resolution on Defending Consumer Rights and Fair Business Practices in the Digital Environment⁷ 8 April 2010
- Charter of Consumer Rights in the Digital World⁸ 1 March 2008
- Resolution on Identity Theft, Phishing and Consumer Confidence⁹ 1 February 2008
- Resolution on Radio Frequency Identification (RFID)¹⁰ 1 April 2005
- Resolution on Passenger Name Records¹¹ 1 June 2004
- Resolution on Protecting Consumers from Fraud and Serious Deception Across Borders¹² 1 November 2002
- Resolution on Children and E-Commerce¹³ 1 July 2002
- Unsolicited commercial electronic mail¹⁴ 1 May 2001
Implementation of the Safe Harbor Agreement¹⁵ 1 May 2001
- Global convention on the protection of privacy¹⁶ 1 May 2001
Safe harbour¹⁷ 1 February 2000
- Jurisdiction on cross-border consumer contracts¹⁸ 1 February 2000
- Core consumer protection principles in electronic commerce¹⁹ 1 September 1999
- Safe harbour proposal and international convention on privacy protection²⁰ 1 April 1999
- Global institutions and consumer protection²¹ 1 April 1999
- Consumer protection in electronic commerce²² 1 April 1999

³ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=298&Itemid=40

⁴ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=296&Itemid=40

⁵ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=294&Itemid=40

⁶ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=265&Itemid=40

⁷ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=261&Itemid=40

⁸ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=43&Itemid=40

⁹ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=52&Itemid=40

¹⁰ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=77&Itemid=40

¹¹ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=84&Itemid=40

¹² http://tacd.org/index.php?option=com_docman&task=doc_download&gid=70&Itemid=40

¹³ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=187&Itemid=40

¹⁴ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=175&Itemid=40

¹⁵ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=163&Itemid=40

¹⁶ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=162&Itemid=40

¹⁷ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=143&Itemid=40

¹⁸ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=140&Itemid=40

¹⁹ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=135&Itemid=40

²⁰ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=151&Itemid=40

²¹ http://tacd.org/index.php?option=com_docman&task=doc_download&gid=148&Itemid=40

²² http://tacd.org/index.php?option=com_docman&task=doc_download&gid=147&Itemid=40