

TACD

TRANS ATLANTIC CONSUMER DIALOGUE DIALOGUE TRANSATLANTIQUE
DES CONSOMMATEURS

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RESOLUTION ON PASSENGER NAME RECORDS

The Issue

The Trans Atlantic Consumer Dialogue (TACD) has strong concerns about how the current disclosure of personal data in airline reservations for flights from the EU to the US will affect travelers' privacy rights.

It is an issue of particular interest to TACD because the manner in which it is being handled by EU and US authorities indicates a lack of concern for the opinions of the public and the European Parliament (the only elected body of the EU) and a willingness to bypass the democratic debate. This is an issue that could have a major impact on travelers of both economic entities, on the future of the EU-US trade relationship, and on the way travel information will be shared among, and disclosed by, law enforcement authorities and commercial entities in the future.

Risks for Consumers

TACD aims to protect EU and US travelers from violations of their privacy as consumers through the extensive disclosure of their passenger name records (PNR) and Advance Passenger Information (API) data from airline carriers, travel agencies, computerized reservation systems (CRS), and data aggregators to US law enforcement authorities and commercial entities.

- We do not oppose sound security measures designed to ensure aviation safety. However, we believe that passenger profiling and monitoring programs, such as the US CAPPS II system, present risks for the privacy of passengers flying from the European Union, and should therefore be subject to the strongest privacy safeguards
- The use of PNR data from air travelers from the EU in the CAPPS II program has 'mission creep' potential, as this data could be used by US law enforcement authorities for purposes beyond aircraft safety and combating terrorism
- The disclosure by the US government of European passengers' data to governments and authorities outside the EU and the US could put at risk the privacy of those passengers if foreign governments do not have adequate privacy protections in place in the public and private sectors
- The lack of strong access, correction and deletion rights with respect to the personal information collected and used by US authorities, as well as the lack of legally enforceable and truly independent redress mechanisms and compensation rights, makes the risks of abuse more likely

- Regarding the method of transfer of data, the sole acceptable system of transfer is the “push” system whereby the data is first selected, then transferred to U.S. authorities, rather than the “pull” system, which allows U.S. authorities direct access to the airline reservation systems
- There have been recent and widespread disclosures of a sweeping amount of travel data between US private sector entities (airlines, CRS, and data mining companies), and by them to US law enforcement authorities without proper legal authority and for dragnet purposes. These show the lack of adequate safeguards to prevent passengers’ data, including information collected from EU travelers, from unwarranted disclosures and potential abuses
- The US-VISIT program may present risks to many travelers’ privacy when it gains the power to establish links to the passenger data collected by US authorities from travelers flying from the European Union to the United States. The processing of data within the US-VISIT system is not protected by the same EU data protection requirements (as embodied in the EU-US PNR agreement of May 2004) that would apply to the disclosure, and further processing, of passenger data to the US Bureau of Customs and Border Protection
- International Civil Aviation Organization (ICAO)’s proposals for new and revised standards for travel documents, combined with laws and proposals in both the US and the EU to require compliance with ICAO standards, would raise serious privacy implications. These proposals would require the mandatory collection and inclusion of PNR beyond that required for airlines’ commercial purposes; the mandatory collection by airlines and/or travel agents of API data beyond that required for commercial purposes; and mandatory forwarding of PNR and API data to government agencies and sharing of this data between governments, despite the lack of legal protections for data shared with those governments or commercial entities.

Resolved

The TACD urges the governments of the United States and the European Union:

- To stop the disclosure of personal data of US-bound passengers flying from the EU, and its use by the US government, *inter alia* for testing of passenger pre-screening systems such as the CAPPS II program, until:
 - all privacy issues regarding the implementation of this program have been addressed in a satisfactory manner as recommended by the US General Accounting Office report of February 2004; and
 - EU-specific concerns have been addressed pursuant to the recommendations of the European Parliament and the Article 29 Data Protection Working Party
- To suspend implementation of the EU-US PNR agreement of May 2004 until the Court of Justice of the European Communities has examined the compatibility of the Commission’s adequacy decision and of the EU-US PNR agreement with EU rules, and until it has ruled on whether the European Parliament’s assent is necessary before the agreement can enter into force
- To encourage the US Congress to assess the specific privacy risks related to passengers’ personal information and passenger pre-screening programs, and determine whether they warrant any specific legislative measures
- Not only to question the adequacy and purposes of the regime surrounding the transfer of passenger data, but also the reality of its implementation. This is because it may lead to a system of global surveillance for general law enforcement purposes, as well as to

increased cooperation between the US government and commercial entities to work on data mining projects without proper privacy safeguards. The purposes for which passenger data are collected have to be strictly defined and their use limited to the fight against terrorism and terrorism-related crimes

- To establish a strong legal framework for transferring airline data to government authorities in the US in a way that is compatible with strong data protection principles. This entails:
 - limiting the data elements to what is proportionate to the aims sought;
 - ensuring the accuracy of the records, and of the matching of passenger records against suspects’;
 - making the data retention periods short and proportionate;
 - providing clear and comprehensive information to passengers, including about the content and scope of the data required, the purpose of collection and the data recipients before their travel information is collected;
 - providing passengers with a judicially enforceable right to access, correct, modify and/or delete their personal data.
 - providing consumers with truly independent redress, compensation and appeal mechanisms in case of governmental abuse and infringement of passengers’ rights;
 - determining the US agencies and authorities to which PNR data would be disclosed
- To make the EU-US PNR agreement and the US Undertakings legally binding in the United States in order to enable air travelers to obtain redress before US courts
- To prohibit transfers of passenger data when they are made to non-EU government agencies or law enforcement authorities, unless they comply with the EU-US PNR agreement, or other existing third-party information-sharing rules with equivalent data protection requirements
- To suspend the implementation of the EU-US PNR agreement until the technical mechanisms to put in place a “push” system of data transfer are available
- To assess passenger data transfer schemes, new standards for travel documents, as well as passenger pre-screening and biometric identification systems, such as CAPPS II, US-VISIT programs, together when negotiating agreements to protect travellers’ privacy. Common data protection rules should apply to interconnected programs that use or will use the same personal data
- To modify the privacy policy applicable to the US-VISIT Program in order to provide travelers, covered by both the EU-US PNR agreement and the US-VISIT program, with the same level of privacy protections
- To encourage all authorities involved in the PNR discussion to consult with consumer protection groups, as well as to include representatives of consumer organizations and data protection authorities in discussions of ICAO and other relevant standards proposals, and in government delegations to ICAO meetings and working groups, in particular in any cases where proposed standards would override or alter national or EU consumer protection or data protection laws or regulations.

Background information:

For general background information, please refer to:

Privacy International, [Transferring Privacy: The Transfer of Passenger Records and the Abdication of Privacy Protection](#) (February 2004).

as well as to the following reference documents:

European Commission & US Customs, [Talk on Passenger Name Record \(PNR\) transmission - Joint Statement](#) (February 17-18, 2003), also available [here](#).

European Parliament, [Resolution on transfer of personal data by airlines in the case of transatlantic flights](#) (March 13, 2003)

European Parliament, Committee on Citizens' Freedoms and Rights, Justice and Home Affairs:

o [Public Seminar on "Data Protection since 11 September 2001: What Strategy for Europe?"](#) (March 25, 2003),

o [Report on the First Report on the implementation of the Data Protection Directive \(95/46/EC\)](#) (February 24, 2004),

o European Parliament, [Resolution on the draft Commission decision noting the adequate level of protection provided for personal data contained in the Passenger Name Records \(PNRs\) transferred to the US Bureau of Customs and Border Protection \(PE 344.133\)](#) (March 31, 2004),

o [Report on the proposal for a Council decision on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection](#) (April 7, 2004),

European Commission:

o [Communication from the Commission to the Council and the Parliament: Transfer of Air Passenger Name Record \(PNR\) Data: A Global EU Approach](#) (December 16, 2003),

o [Proposal for a Council Decision on the conclusion of an Agreement between the European Community and the United States of America on the processing and the transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection](#) (March 17, 2004), also available [here](#)

o [Draft Decision on the adequate protection of personal data contained in the PNR of air passengers transferred to the United States' Bureau of Customs and Border Protection \(including the 2nd US Undertakings\)](#) (March 31, 2004),

o [Decision on the adequate protection of personal data contained in the Passenger Name Record of air passengers transferred to the United States' Bureau of Customs and Border Protection \(including the 3rd US Undertakings\)](#) (May 14, 2004),

Council of the European Union:

o [Directive 95/46/EC of the European Parliament and the Council on the Protection of Individuals with regard to the processing of Personal Data and on the Free Movement of such Data](#), Official Journal L 281 , 23/11/1995 P. 0031 – 0050.

o [European Union code of conduct for computerized reservation systems \(Council Regulation \(EEC\) No. 2299/89, 24 July 1989, Official Journal L 220, 29/07/1989 P. 0001 – 0007.](#)

o [Directive on the obligation of carriers to communicate passenger data](#) (April 27, 2004).

Article 29 Data Protection Working Party:

o [Opinion 6/2002 \(WP 66\) on transmission of Passenger Manifest Information and other data from Airlines to the United States](#) (October 24, 2002).

o [Opinion 4/2003 \(WP 78\) on the Level of Protection ensured in the United States for the Transfer of Passengers' Data](#) (June 13, 2003).

o [Opinion 2/2004 \(WP 87\) on the Adequate Protection of Personal Data Contained in the PNR of Air Passengers to Be Transferred to the United States' Bureau of Customs and Border Protection \(US CBP\)](#) (January 29, 2004).

Stefano Rodotà (Chair of the Article 29 Data Protection Working Party), [Speech to the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs](#) (November 25, 2003).

Frits Bolkestein (Member of the European Commission in charge of the Internal Market and Taxation):

o [Speech on "Airline passenger data transfers from the EU to the United States \(Passenger Name Record\)", at the European Parliament's plenary session](#) (Strasbourg, March 12, 2003).

o [Address to the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs](#) (Brussels, September 9, 2003), also available [here](#).

o [Address to the European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and Legal Affairs and the Internal Market](#) (Brussels, December 1st, 2003).

o [Letter from Commissioner Bolkestein to US Secretary Tom Ridge, Department of Homeland Security](#) (Dec. 18, 2003).

[1st version of the Undertakings of the United States Bureau of Customs and Border Protection and the United States Transportation Security Administration](#) (May 22, 2003).

[2nd version of the Undertakings of the Department of Homeland Security Bureau of Customs and Border Protection \(CBP\)](#) (January 12, 2004).

[3rd version of the Undertakings of the Department of Homeland Security Bureau of Customs and Border](#)

[Protection \(CBP\)](#) (May 14, 2004).

United States Department of Homeland Security:

- o [Notice of Privacy Act System of Records](#), 68 Fed. Reg. 69412 (December 12, 2003)
- o [US-VISIT Program Privacy Policy](#) (November 2003).
- o [US-VISIT Frequently Asked Questions](#) (revised Dec. 31, 2003).
- o [US-VISIT Program, Increment 1, Privacy Impact Assessment](#) (December 18, 2003).
- o [Interim Final Rule on Implementation of US-VISIT](#), 69 Fed. Reg. 467 (Jan. 5, 2004).
- o [Redress Policy for US-VISIT](#) (March 15, 2004).
- o [US-VISIT Fact Sheet](#) (revised April 2, 2004).

United States General Accounting Office:

- o [Aviation Security, Computer-Assisted Passenger Prescreening System Faces Significant Implementation Challenges](#) (February 2004), also available [here](#).
- o [Data Mining, Federal Efforts Cover a Wide Range of Uses](#) (May 2004).

International Air Transport Association (IATA):

- o [Advance passenger information \(API\) - a statement of principles](#), working paper submitted to the International Civil Aviation Organisation (March 10, 2004).
- o [Airline reservation system and passenger name record \(PNR\) access by States](#), working paper submitted to the International Civil Aviation Organisation (March 15, 2004).

International Civil Aviation Organization (ICAO):

- o [Advance passenger information \(API\)](#), working paper submitted by the Secretariat (January 13, 2004).

Working Party on Aviation of the Council of the European Union, [An International Framework for the Transfer of Passenger Name Record \(PNR\) Data to Public Authorities](#), working paper submitted to the International Civil Aviation Organisation (February 13, 2004).

Technology and Privacy Advisory Committee, [Safeguarding Privacy in the Fight Against Terrorism](#) (March 2004).

Congressional Research Service, [U.S. Visitor and Immigrant Status Indicator Technology Program \(US-VISIT\)](#) (February 18, 2004).

[Resolution concerning the Transfers of Passengers' Data](#), 25th International Conference of Data Protection & Privacy Commissioners, Sydney (12 September 2003).

EU Network of Independent Experts on Fundamental Rights (CFR-CDF):

- o [Report on the Situation of Fundamental Rights in the European Union and its Member States in 2002](#) (March 31, 2003).
- o [Report on the Situation of Fundamental Rights in the European Union in 2003](#) (January 2004).

Coalition of human rights and civil liberties organizations, ["Open Letter to the ICAO", A second report on 'Towards an International Infrastructure for Surveillance of Movement.'](#) (March 30, 2004).

Privacy International, [Transferring Privacy and Inadequate Adequacy – Commission Fails in 'Negotiations.'](#) (May 2004).

Electronic Privacy Information Center:

- o [Statement of Cédric Laurant before the European Parliament's Committee on Citizens' Freedoms and Rights, Justice and Home Affairs at the Public Seminar on "Data Protection since 11 September 2001: What Strategy for Europe?"](#) (March 25, 2003), also available [here](#).
- o [Comments on the Department of Homeland Security's Notice of Privacy Act System of Records](#), Docket No. DHS/ICE-CBP-001 (January 12, 2004).
- o [Comments on the Department of Homeland Security's Interim Final Rule on Implementation of US-VISIT](#), Docket No. BTS 03-01 (February 4, 2004).
- o [Web page on the EU/US Passenger Data Disclosure Page.](#)
- o [Web page on Passenger Profiling.](#)
- o [Web page on US-VISIT.](#)
- o [Web page on Northwest Airlines' Disclosure of Passenger Data to Federal Agencies.](#)

TACD's resolution was also endorsed by the following 24 civil liberties groups from around the world:

Nigel Waters, nigelwaters-at-iprimus.com.au
Australian Privacy Foundation (<http://www.privacy.org.au>) (AUSTRALIA)

Sjoera Nas, info-at-bof.nl
Bits of Freedom (<http://www.bof.nl>) (NETHERLANDS)

Richard Sobel, lebos123-at-aol.com
Cyber Privacy Project (<http://www.cyberprivacyproject.org>) (USA)

Rikke Frank Joergensen, rfj-at-humanrights.dk
Digital Rights Denmark (<http://www.digitalrights.dk/>) (DENMARK)

Lee Tien, tien-at-eff.org
Electronic Frontier Foundation (<http://www.eff.org>) (USA)

Ville Oksanen, ville.oksanen-at-effi.org
Electronic Frontier Finland (<http://www.EFFI.org>) (FINLAND)

Catherine Teule, catherine.teule-at-wanadoo.fr
European Association for the Protection of Human Rights/Association européenne de défense des droits de l'Homme (FIDH-AE) (<http://www.fidh-ae.org/>) (EU)

Ian Brown, I.Brown-at-cs.ucl.ac.uk
European Digital Rights (EDRI) (<http://www.edri.org>) (EU)

Mike Stollenwerk, Majstoll-at-aol.com
Fairfax County Privacy Council (<http://www.fairfaxcountyprivacycouncil.org>) (USA)

Ian Brown, ian@fipr.org
Foundation for Information Policy Research (<http://www.fipr.org/>) (UK)

Marc Fromentin, fromentin-at-gisti.org
GISTI (Groupe d'Information et de SouTien des Immigrés) (<http://www.gisti.org>) (FRANCE)

Larry Pratt, ldpratt-at-gunowners.org
Gun Owners of America (<http://gunowners.org>) (USA)

Meryem Marzouki, Meryem.Marzouki-at-iris.sgdg.org
Imaginons un réseau Internet solidaire (IRIS) (<http://www.iris.sgdg.org>) (FRANCE)

Malachy Murphy, malmurphy-at-usa.net
Irish Council for Civil Liberties (ICCL) (<http://www.iccl.ie>>www.iccl.ie) (IRELAND)

Ligue française des droits de l'homme
<http://www.ldh-france.org/> (FRANCE)

Markus Beckedahl, m.beckedahl-at-gmx.de
Netzwerk Neue Medien (Network New Media) (<http://www.nnm-ev.de>) (GERMANY)

Deborah Pierce, dsp-at-privacyactivism.org
PrivacyActivism (<http://www.privacyactivism.org>) (USA)

Rosemarie McIlwhan, info-at-scottishhumanrightscentre.org.uk
Scottish Human Rights Centre (www.scottishhumanrightscentre.org.uk) (UK)

Tony Bunyan, office-at-statewatch.org
Statewatch (<http://www.statewatch.org>) (UK)

Twister (Bettina Winsemann), twister-at-stop1984.com
STOP1984 (<https://www.stop1984.com>) (GERMANY)

Pierre Contesenne, sudaf-at-wanadoo.fr
Syndicat SUD Aérien (<http://www.sud-aerien.org>) (FRANCE)

Marco Cappato, m.cappato-at-radicali.it
Transnational Radical Party (<http://www.radicalparty.org>) (EU)

Andreas Krisch, andreas.krisch-at-vibe.at
VIBE!AT Verein für Internet-Benutzer Österreichs (<http://www.vibe.at/>) (AUSTRIA)

Pam Dixon, info2004-at-worldprivacyforum.org
World Privacy Forum (<http://www.worldprivacyforum.org>) (USA)