

May 2, 2014

EU Data Protection

Newly Launched Privacy Bridge Project Seeks U.S., EU Privacy Common Ground

by Ali Qassim

Data protection regulators, academics and attorneys from the U.S. and the European Union will be working together on a Privacy Bridge Project that aims to find common privacy ground, Dutch Data Protection Authority Chairman Jacob Kohnstamm said May 1 at the International Association of Privacy Professionals Europe Data Protection Intensive 2014.

Headed by the Decentralized Information Group at the Massachusetts Institute of Technology Computer Science and Artificial Intelligence Laboratory and the Institute for Information Law of the University of Amsterdam, the group's goal is to deliver a paper that will be the central discussion point at a global conference of data protection authorities to be held in Amsterdam in the fall of 2015, Kohnstamm said.

Kohnstamm said there is need for greater privacy convergence on both sides of the Atlantic, and differing interpretations of data protection are "complicating the lives of data protection authorities."

Privacy issues are driven by consumer rights in the U.S., but in Europe the emphasis is more on fundamental rights, he said. "People use the word 'interoperability,' but I am doubtful whether the word is being used in the same way," he said. In the U.S., interoperability is used to describe a system in which fundamental rights aren't controlling the conversation, he said. But in Europe interoperability means the U.S. should "try to get a decent privacy bill passed."

Focus on Finding Practical Solutions

Kohnstamm said that both sides need to "sit together" and "not try to persuade the other that their way is better." Instead, they need "to find practical, technological solutions."

He urged the EU to stop expecting that Washington is going to plan serious privacy legislation "for the time being," and said that the U.S. should proceed under the assumption that the EU will proceed eventually with its proposed revision to the EU data protection regulation. The European Parliament approved the regulation in March (13 PVLR 444, 3/17/14).

Kohnstamm said that some 20 privacy specialists, including Fred Cate, distinguished professor and C. Ben Dutton professor of law at Indiana University Maurer School of Law, and Bojana Bellamy, president of Hunton & Williams LLP's Centre for Information Policy Leadership, met in Amsterdam April 28 and 29 to discuss the Privacy Bridge Project.

The group is slated to hold meetings during 2014 in Washington, Brussels, and Boston, with a view to finalizing a paper by the summer of 2015 in preparation for the fall conference in Amsterdam.

Privacy Notice Assailed

Elaborating on the need for the U.S. and the EU to find practical privacy solutions in a world of rapidly-evolving technology, Cate said that data controllers are issuing a “sea of privacy notices” that place too much responsibility on consumers to protect their personal data.

“We should focus more on the use of big data rather than as in the U.S. on the collection and retention of data,” Cate said.

Peter Cullen, Microsoft Corp. general manager for trustworthy computing, who is involved in the Privacy Bridge Project, said that if data controllers are going to assume “more accountability” they need to explain to consumers more about the risks they face when they disclose their data to organizations.

“In a world of ubiquitous automated data collecting, we do need to find a different model based on more responsibility of data stewards with their data,” he said.

As a practical example of a change needed, Richard Thomas, global strategy advisor for Hunton & Williams in London and the former U.K. information commissioner, said most privacy notices that organizations ask consumers to acknowledge are far too wordy and mostly incomprehensible.

‘Brave New World’ in U.K.?

In a May 1 keynote speech, U.K. Information Commissioner Christopher Graham called for data protection in the U.K. to enter a “brave, new world.”

By “brave” Graham said he meant that his office needs to continue to remain independently and adequately funded and provided the necessary independent legal authorization so it can “tell the truth to both the government and to corporations.”

The privacy regime in the U.K. also needs to strive to be “new” by staying “agile and alert” to enable it to respond to a “fast, developing world,” Graham said.

Graham said his plea to U.K. and EU lawmakers is, “don’t tie our hands with over prescriptive, process-driven regulations.”

Further information on IAPP Europe is available at https://www.privacyassociation.org/community/iapp_europe.