

Editorial

**Bridget Treacy
introduces
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2 of Privacy &
Data Protection
by considering
how data
protection is at
a cross roads**

The theme of the 32nd International Conference of Data Protection and Privacy Commissioners held in Jerusalem in October was “Privacy: Generations”. Delegates were challenged to consider a new generation of technologies, users and governance. At the heart of the debate was the serious question of whether privacy rights are dissipating as technology becomes ubiquitous and younger generations appear less concerned about privacy. Is it really the case that data protection rights are being eroded, while we stand by and watch?

A hard hitting opening video clip (which can be viewed by searching under “privacy generations” on YouTube) challenged delegates to consider whether our secrets remain secret in a digitised world, or whether the digital explosion has meant that our privacy rights have already been diminished. The video combines quotes from technology leaders (e.g. Eric Schmidt, CEO, Google: “we know where you are, we know where you’ve been, we can more or less know what you are thinking about”) and attention grabbing facts (in 2010 more than 1.2 zettabytes of information will be created on blogs, Twitter, Facebook and other social networks, which is the equivalent of broadcasting 24 hours per day, every day, for 125 million years).

Against this backdrop, regulators, academics and privacy professionals grappled with key privacy governance and regulatory challenges that lie ahead. Topics that were particularly hotly debated included the erosion of consent, the right to forget, and government access to private sector data.

Echoing some similar themes, the European Commission’s long awaited communication on proposed changes to the Data Protection Directive was published on 4th November 2010. There has been much speculation over the last 18 months as to what proposals the Commission might make, and growing anticipation of change. Yet, on careful reading, the paper is far from radical and, on some issues, is distinctly disappointing.

The paper itself contains little in the way of surprises. This is largely a consequence of the Commission’s efforts to ensure that its deliberations on the key issues have been transparent. There have been many opportunities for stakeholders to comment, and the Commission has been willing to consult widely and to seek feedback on some of its early proposals for reform. Thus, a focus on the need to:

- increase harmonisation between data protection laws of EU Member States;
- clarify how the data protection principles should apply to new technologies (such as cloud computing and social networks) and promote the principles of Privacy by Design;
- simplify cross-border data transfers;
- enhance the rights of individuals; and
- increase effective enforcement by national data protection authorities.

What is perhaps disappointing is that this is surely an opportunity to explore more radical options for modernising the data protection regulatory framework. Newer concepts, including the potential role of an accountability principle in data protection, have received only tentative support from the Commission.

The Commission’s paper is by no means the last word on possible reform, and comments are invited by 15th January 2011. The Commission’s legislative proposals are expected to follow towards the end of 2011.

Closer to home there have been murmurings of discontent that we have not seen stronger enforcement of the Data Protection Act in the UK, and that privacy rights are being eroded. Particular criticism has focused on the Information Commissioner’s decision not to seek a monetary penalty from Google in the wake of his finding that Google’s collection of payload data by its Street View cars amounted to a “significant breach” of the Act in that “the collection of this information was not fair or lawful”. Rather than impose a fine, the Commissioner sought an undertaking from Google, requiring it to implement additional data protection safeguards and to submit itself to audit by the ICO. Such an approach may not have attracted the media attention that a fine might have done, but may in fact do more to safeguard the privacy rights of individuals.

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