



AMBERHAWK

OUTSOURCING AND THE EU DATA PROTECTION DIRECTIVE

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DEFINITIONAL ASPECTS

- Personal data – “an identifiable person is one who can be identified”.
- Data controller – the person in control of purpose and means of processing.
- Data processor – the person who processes on behalf of a data controller (i.e. does not control purpose).

ARTICLES 16, 17, 25 and 26



- Outsourcing involving the processing of personal data is usually a “data processor” activity.
- Data controller responsible for choice of data processor (contractual security and processing standards even when outside the EEA).
- In the UK, the data controller can make an of adequacy assessment if data processor is outside EEA.
- Software/technology supplier is not a data processor unless he delivers services in respect of personal data (e.g. Support, testing).

CONSEQUENCES



- Data controller is liable for use of biometric.
- The need for a Privacy Impact Assessment will serve to highlight risks that need mitigating?
- Controller may feel he is taking a risk too many, if he does not really understand the technology or the benefits.
- Data controller may need to convince data subjects that the processing is in their interest

LEGITIMATE PROCESSING (A.7)



- “Necessary” is used in all A.7 conditions except consent.
- Consent is a defined term (A.2(h)).
- the adjective 'necessary' is not synonymous with 'indispensable', neither has it the flexibility of such expressions as 'admissible', 'ordinary', 'useful', 'reasonable' or 'desirable'"(*Silver v UK*).

DATA PROTECTION PRINCIPLES



- “Kiddyprints” - www.leavethemkidsalone.com
- Fairness/transparency issues (A.10)
- Right to object (A.14)
- Disclosure concerns (e.g. Police; A.7,A.13)
- Is the processing excessive (A.6)?
- Retention of biometrics (A.6)
- Is the processing “necessary” (A.7)?

HUMAN RIGHTS



The processing of personal data engages A.8

Any processing without consent has to be

- in accordance with a law that has been enacted within a democratic framework?
- the law has to be pursuant to one or more of the interests of the legitimate objectives identified in Article 8(2) (e.g. "national security", "public safety")?
- The law has to be "necessary in a democratic society" in relation to meeting a pressing and identifiable social need?



CONCLUSIONS

- “Necessary” is an important test in the absence of consent – why is it necessary? Should be interpreted from the context of the data subject as well as data controller.
- Simple opt-out and easy right to object - can this be equated with consent?
- If the processing is necessary, it is unlikely to be excessive.



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THE END

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