



Council of Europe Contribution to the W3C Workshop on Web Tracking and User Privacy

28-29 April 2011, Princeton University

Convention 108: protection of individuals with regard to automatic processing of personal data

The Council of Europe celebrates this year the 30th Anniversary of its Data Protection Convention (usually referred to as Convention 108) which has served as the backbone of international law in over 40 European countries and has influenced policy and legislation far beyond Europe's shores.

With new data protection challenges arising everyday, the Convention is being overhauled to meet new realities and the Council of Europe is currently working on its modernisation. If the principles of the Convention can be considered as time-proof, the latest technological developments of the information and communication society and the globalisation of exchanges nevertheless lead to potential new risks for the protection of human rights and fundamental freedoms, which may require specific attention.

In its modernisation work of Convention 108, the Council of Europe launched on Data Protection Day (28 January) a public consultation. A consultation paper identified several issues to discuss in the context of the modernisation and a number of interrogations and proposals were shared, one of them being specifically related to tracking as addressees were asked if a right 'not to be tracked' (RFID tags) should be introduced in the Convention. Responses to this consultation are now being considered and will be examined by the Consultative Committee of Convention 108 in the coming months.

Link to Convention 108:

<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=108&CM=1&DF=&CL=ENG>

Link to the modernisation page:

http://www.coe.int/t/dghl/standardsetting/dataprotection/Modernisation_en.asp

Recommendation (2010)13 of the Council of Europe on the protection of individuals with regard to automatic processing of personal data in the context of profiling

This Recommendation is the first text to lay down internationally-agreed minimum privacy standards to be implemented both by the public and private sector, through national legislation and self-regulation. It has been adopted by the Council of Europe, as a sectorial complement to Convention 108 on data protection.

Profiling, the technique of observing, collecting and matching people's personal data online, can benefit both individuals, the economy and society by, for instance, leading to better market segmentation or permitting an analysis of risks and fraud. However the use of profiling techniques without precautions and specific safeguards could severely damage human dignity by notably unjustifiably depriving individuals from accessing certain goods or services.

The Recommendation aims at:

- providing a coherent regulatory framework, which strikes a fair balance between the interests at stake;
- ensuring effective protection of the rights of data subjects and fair procedures in situations where mass quantities of data are processed;
- avoiding decisions, discrimination or stigmatisation made automatically on the basis of profiles.

Link to the Recommendation:

<https://wcd.coe.int/wcd/ViewDoc.jsp?id=1710949&Site=CM&BackColorInternet>

And to its explanatory memorandum:

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM\(2010\)147&Language=lanEnglish&](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CM(2010)147&Language=lanEnglish&)

Other relevant texts

The Committee of Ministers of the Council of Europe adopted a Declaration on freedom of communication on the internet:

[http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf\(2003\)007_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/Doc/H-Inf(2003)007_en.pdf)

The Council of Europe also produced Human Rights Guidelines for Internet Service Providers:

http://www.coe.int/t/information/society/documents/HRguidelines_ISP_en.pdf

What's next?

The Council of Europe is currently preparing two draft Recommendations fully relevant to the workshop's topic: one on the protection of human rights with regard to search engines and another one on measures to protect and promote respect for human rights with regard to social networking services, which will both address the need for transparency concerning the use of personal data.

Both Recommendations will be addressed to member states/governments and complemented by guidelines aimed at providing inspiration/guidance to Industry.