25th INTERNATIONAL CONFERENCE OF DATA PROTECTION &

PRIVACY COMMISSIONERS

SYDNEY, 12 SEPTEMBER 2003

RESOLUTION ON IMPROVINGTHE COMMUNICATION OF DATA PROTECTION AND PRIVACY INFORMATION PRACTICES

Resolution

That the 25th International Conference of Privacy and Data protection Commissioners resolve that:

1. The conference calls the attention of organisations, in both public and private sectors, to the importance of:
    - improving significantly their communication of information on how they handle and process personal information;
    - achieving global consistency in the way they communicate this information;

    and by these means

    - improving individuals' understanding and awareness of their rights and choices and their ability to act on them; and
    - putting an incentive on organisations to improve, and make more fair, their information handling and processing practices as a consequence of this awareness.

2. The conference endorses the following means of achieving these goals:
    - development and use of a condensed format for presenting an overview of privacy information that is standardised world wide across all organisations which sets out:
        - the information that is most important for individuals to know; and
        - the information that individuals are most likely to want to know; and
    - the use of simple, unambiguous and direct language;
    - the use of the language of the website or form which is used to collect information;
    - confining the format to a limited number of elements which, consistent with the above, covers important data protection principles like:
        - who is collecting the personal information and how to contact it (at least the official name of the organisation and physical address);
        - what personal information the organisation collects and by what means;
        - the purposes for which the organisation is collecting the personal information;
        - whether the personal information is to be disclosed to other organisations and, if so, the kinds or names of organisations and for what purposes;
        - the privacy choices the individuals have and how to exercise them easily, in particular, choices about whether personal information can be disclosed to

third parties for unrelated but lawful purposes and about which personal information individuals must provide to receive a service;
    - a summary of the individual's rights of access, correction, blocking or deletion;
    - which independent oversight body individuals may approach in order to verify the information given;
- the use of appropriate means to enable individuals to find further information easily including:
    - information that any applicable law requires an organisation to provide, including rights of access, correction, blocking or deletion, and how long an organisation retains personal information; and
    - a complete explanation of the information summarised in the condensed format; and
    - the complete statement of an organisation's information handling and processing practices.

3. The conference agrees that such standardised and condensed format should be consistent with all national laws that may apply, and is to be in addition to, where necessary, and consistent with, any notices that an organisation is legally required to give an individual.

4. The conference is aware of the importance of the timing of presentation of data protection and privacy information to the individual. For example, it is particularly desirable for information to be presented automatically at the point where individuals have the chance to choose what information they give, and whether information can be disclosed to third parties. In other cases it may be appropriate to leave individuals to seek data protection and privacy information via obvious links. The conference is aware of the important work the EU Article 29 Data Protection Working Party has done on the automatic presentation of data protection and privacy information in Recommendation 2/2001 on certain minimum requirements for collecting personal data on-line in the European Union.

5. The conference considers the timing for the presentation of the condensed format (which takes into account both the on and off-line environments) would be a fruitful area of further work for Data Protection and Privacy Commissioners.

6. The Conference is also aware of related activities such as the development of computer languages describing privacy policies. It encourages the further development of ways to translate those policies into the standardised and condensed format.

7. The conference sees these as first steps to encourage better practice in the way organisations communicate privacy information about how they handle or process personal information. The conference is aware of initiatives in this area and encourages any such initiatives to improve communication between organisations and individuals. The Conference looks forward to working with organisations and interest groups that are taking such steps and it expects to take further steps to improve on communications between organisations and individuals in future conferences.

EXPLANATORY NOTES FOR PROPOSED RESOLUTIONON IMPROVINGTHE COMMUNICATION OF DATA PROTECTION AND PRIVACY INFORMATION PRACTICES

This resolution aims to reach agreement about the need for public and private sector organisations to better communicate information about the way they handle and process personal information.

Why this resolution is important

A significant number of countries around the world have privacy law, or other laws, that require companies and other organisations collecting personal information to give consumers information about their privacy practices. Ensuring people are well informed about what an organisation does with their personal information is one of the main ways that laws seek to protect privacy. This enables people to exercise choice and have control over their personal information.

This resolution is important because there is growing evidence, however, that despite the volumes of documents and information that organisations are providing, individuals are not well informed about the privacy practices of the organisations they deal with, (see for example, a recent report from the Annenberg Public Policy Center of the University of Pennsylvania, Americans and Online Privacy: The system is Broken http://www.asc.upenn.edu/usr/jturow/internet-privacy-report/new.html) and that further work is needed to ensure that individuals get the information they need at the right time to place their trust in the sites with which they are interacting. (See for example, the Recommendation 2/2001 on certain minimum requirements for collecting personal data on-line in the European Union http://europa.eu.int/comm/internal_market/privacy/workingroup/wp2001/wpdocs01 _en.htm). The Annenberg Public Policy Center research also provides evidence confirming that individuals will spend very little time and effort to find out about such information.

A further challenge is to enable individuals to be well informed and able to exercise choices when the organisations with which they are dealing operate globally. For example, Action 6, “More harmonised information provisions” in the recent European Commission Report on the transposition of Directive 95/46/EC calls for a more harmonised approach to providing notice to individuals (http://europa.eu.int/comm/internal_market/privacy/lawreport/data-directive_en.htm).

What the resolution is trying to achieve

There is now considerable research on how organisations can improve communication with individuals when individuals need to be given important information. Much of this has happened in the area of food labelling. (See for example, James R. Bettman, John Payne and Richard Staelin, ‘Cognitive Considerations in Effective Labels for Presenting Risk Information’, Journal of Public Policy& Marketing, Vol 5, 1986, p.1-28.). However, there has also been quite a bit or work done in relation to better communicating information about an organisation’s personal information handling practices. Simplification of notification procedures is on the 2003 work program for the European Union Article 29 Data Protection Working Party.

(http://europa.eu.int/comm/internal_market/privacy/workingroup/wp2003/wpdocs03_en.htm).
Work has also been done on improving notice in the US

(http://www.ftc.gov/bcp/workshops/glb/index.html) and by the P3P user agent taskforce (http://www.w3.org/P3P/2003/p3p-translation.htm).

The result of this work shows that an important first step to improving communication in both the on and offline environment is;

- a shorter format for providing information, with a limited number of elements (some research says 6 or 7);
- including just the basic information that individuals want to and need to know;
- standardisation to develop familiarity, education and ability to compare;
- simpler, non-legalistic language, and use of everyday terminology;
- clear and easy access to further information.

This resolution focuses on these matters as being an important first step in improving communication. There are, however, a number of other very important dimensions to achieving this, which it not possible for this resolution to cover in detail.

The next important step is presenting information about an organisation's information handling practices at the right time. Again, the EU Article 29 Data Protection Working Party has done a considerable amount of work on this particularly in the online environment in Recommendation 2/2001 on certain minimum requirements for collecting personal data on-line in the European Union (http://europa.eu.int/comm/internal_market/privacy/workingroup/wp2001/wpdocs01_en.htm).
Ensuring that the right information is presented at the right time is a complex area. The right time may vary depending on the medium the person is using to interact with an organisation. For this reason, the resolution proposes that this could be a fruitful area of future work for data protection and privacy commissioners.
Although the individual would be the main beneficiary of improved communication of information about an organisation's privacy practices, there are also likely to be benefits for business. For example, organisations could achieve better relationships with their clients in the form of trust and loyalty. A standardised format that could be used by a company globally could provide economies of scale.

The drafting process

Having identified the problem of inadequate communication of information about an organisation's personal information handling practices as being a possibly global issue, the Office of the Federal Privacy Commissioner, Australia, asked accredited data protection and privacy commissioners by email if they agreed that this was an important issue and an appropriate topic for a resolution at the 25th International Conference of Data Protection and Privacy Commissioners (http://www.privacyconference2003.org/). The Office then sent another email outlining the issue further. Eighteen out of the twenty-seven Commissioners who responded to these emails agreed that this was an important issue. On the basis of these responses the Office invited Commissioners from Brandenburg, Czech Republic, France, Greece, Hong Kong, Italy, Lithuania, Netherlands, Poland and the United Kingdom to form a working group to work on the draft of the resolution which is now circulated with this explanatory note.

Before the conference, the Office of the Privacy Commissioner, Australia created a webpage with background material on it. This material aims to help understanding of the debate about improving

communication of information about privacy practices. This is available at http://www.privacyconference2003.org/resolution.asp.

The issues behind the resolution will also be discussed in a workshop session open to all registered participants in the 25th International Conference of Data Protection Commissioners, before Commissioners formally consider the resolution.

Points about content of the resolution

The resolution assumes that organisations will comply with their notification requirements under the law. The standardised condensed format proposed in the resolution would (unless an organisation does not need to provide any more information) be in addition to these requirements.

Some people may be concerned that organisations should also be improving their information handling practices, or that the privacy laws applying to organisations should be strengthened. These are very big issues that cannot easily be dealt with in one resolution. Instead, this resolution is taking one first and small, but achievable, step of seeking to achieve effective communication of information about the current handling practices of organisations. It deals with this communication issue as separate from the much more complex one of whether, for whatever reason, those practices need improving. Of course, the practices an organisation communicates about must be consistent with any applicable law.

The purpose of providing a condensed format is to greatly improve the chances that individuals will at least read and understand the most important privacy information. This would be an important practical improvement on the current situation which appears to be that many individuals do not read or understand very much of the information that organisations provide. The resolution therefore picks out the elements of information about an organisation's information handling practices identified by the working group as being the most important to be included, based on research to date and its own knowledge. There are, of course other important elements. However including them in the condensed format would make it too long and would defeat the purpose of the resolution which is to achieve effective communication. The resolution deals with this dilemma by urging organisations to provide appropriate means to enable individuals to find further information easily, including the all the rest of the information that the law may require an organisation to provide.

If a condensed format is to be standardised globally and across organisations, there are limits on the kind of information that can be included in the format. For example, laws about rights of access vary from country to country. Trying to set out all the possible applicable rights an individual might have globally in a condensed format would make it too long. The resolution approaches this problem by providing that the format should summarise access rights and then provide the means for individuals to find further information.

It is very important that the information an organisation includes in a condensed format does not mislead individuals about the organisation's practices. For this reason, the resolution provides that the condensed format must be consistent with all national laws that apply, and this would include any laws prohibiting organisations from engaging in misleading and deceptive conduct. If

organisations take sufficient care, information in the condensed format can be framed so that individuals can get an accurate snapshot of an organisation's practices. The resolution also addresses this issue by requiring the format to include information about the independent supervisory body to which individuals may complain if they are concerned that their rights have been breached.

Finally, the working group seeks to ensure that the work begun by passing this resolution does not end there. The final paragraph of the resolution therefore suggests that the way forward is for Commissioners to work with all those working on improving communication in the way suggested by the resolution to ensure that the next necessary steps are taken.