

## 24<sup>th</sup> international conference data protection and privacy commissioners

Conference Papers

Tuesday 10th & Wednesday 11th September 2002

### Summary of the Closed Session: Findings Report

Dr Perri 6

Dr Steve Hodgkinson

David H. Flaherty

Paneer Selvan Ramasamy

Stefano Rodota

Orson Swindle

Stephen Lau

Rear Admiral Nick Wilkinson CB

Elizabeth France

### **Opening & Welcome**

"Ladies and Gentlemen; Welcome to Wales. On behalf of my fellow Commissioners, the Commissioners whose names you have seen or jurisdictions you have seen on that short film, The Commissioners Guernsey, Jersey, Isle of Man and Ireland. Welcome to the 24th International conference of Data Protection and privacy commissioners. "

"We had our closed session yesterday and now we welcome you all to the open sessions, 300 or so of us are gathered here to discuss issues that are clearly important in today's world and on which I'm sure you all have a lot of views to express. I hope we have built a programme that will mean that you do have the opportunity to express your views. That is our intention."

"What we have tried to do is arrange for just three big plenary sessions in which we hope you will be provoked. We have particularly invited our plenary speakers to take views that will show you the diversity of the opinion on the issues that we are discussing. We appreciate that in plenary sessions there won't be as much opportunity for all you of you to get involved in discussion but there will be roving microphones and they will be brought to you at the end of the plenary sessions if you indicate that you have comments to make. But our hope is that the debate that is provoked in plenary sessions will be taken through into the workshops that immediately follow where we have allowed a considerable amount of time for discussion and very short interventions by our invited speakers who will then join in as the debate progresses. I hope that you find that a challenging format and one that gives you some insight as the two days continue."

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### **Summary of the Closed Session: Findings Report**

#### **FIRST ANNOUNCEMENT FROM CLOSED SESSION: 24TH INTERNATIONAL DATA PROTECTION AND PRIVACY COMMISSIONERS CONFERENCE**

Representatives from over 50 Data Protection Authorities and Privacy Commissioners attended the 24th International Data Protection and Privacy Commissioners Conference held in Cardiff, Wales. The Conference is being jointly hosted by the Commissioners from Republic of Ireland, Jersey, Guernsey, Isle of Man and the United Kingdom.

The assembled Commissioners and their representatives discussed many

matters of common concern ranging from privacy issues in relation to websites through to video surveillance of the population in public and private places. However, the Commissioners devoted a substantial amount of time to considering the various national responses to the terrorist attacks on 11th September 2002.

The Commissioners agreed that while there is the need to protect society from such outrages, the reaction in many countries might have gone beyond a measured response to the terrorist threat with serious implications for personal privacy. The Commissioners agreed that the need to safeguard personal privacy in such developments remains an essential task for the worldwide data protection community. Unless an approach is taken by Governments which correctly weighs data protection and privacy concerns there is a real danger that they will start to undermine the very fundamental freedoms they are seeking to protect.

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### **Plenary Session A**

#### **Dr Perri 6**

"We are looking at new public management. Back in those days it was all about focus, "focus", said one minister here in the UK, "like a laser beam. Do one thing, do it over again, do it better.", and the agenda was very much the creation of specialist agencies - the dedicated agency model handling its own information through most of the 80s and 90s was the basis of most government reform."

"Throughout, certainly the anglophile world and increasingly in continental Europe as well the agenda was shifted to what British Prime Minister Blair calls 'joined up government.'"

"For all of those big issues that we care most about, combating crime, health, politicians have felt the need to work in much more integrated ways and force bureaucracies to do that as well. The result is a completely changed context and ways in which data sharing data matching gets done."

"The risk of data sharing being put together from different sources and the wrong conclusion being jumped to because data that separately leads to perfectly sensible conclusions put together can lead to confusing conclusions."

"Privacy and seamless government - friends or foes, well in the eyes of different groups of the public see it slightly differently. Nobody said absolute enemies. One person in all six groups was prepared to say 'I would actually rather the inconvenience of filling out the same form 17 different times for 17 different agencies, than have them match it.' Many spontaneously said what ministers say, namely, that privacy and joined up government were part of the same thing. I think in the eyes of many of the public seamless government and privacy are neither friends no foes - they're kind of uneasy neighbours and I think part of our task is how we can reassure uneasy neighbours that they can at least rub along together. They don't have to love each other, but they don't have to fight either."

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#### **Dr Steve Hodgkinson**

"My perspective is one of an e-government practitioner ... E-government enables a brave new world ...of joined up services and better responses by government and as government practitioners we are now in the situation were we are starting to ask how do we decide when privacy risks e-government initiatives perhaps out way service benefits and that is a trade off that we have to face as we are looking at prioritising activities in e-government."

"The focus [in Victoria] now is changing significantly, where the focus of government on line was getting the website services on line and going beyond, the focus now is much more about using the powers of information and communication technology more strategically in government and the

policy network that we are now working to is called 'putting people at the centre' - launched in March this year."

"There are four objectives of that policy, substantially improving support and services to citizens, providing better community engagement, using innovation to find better ways of doing government, and building the foundations for ongoing reform. "

"The agenda now is much more transformational, rather than putting services on line."

"Although there are obvious benefits of information sharing, such as faster access to services and treatment, the world is a less than perfect place, mistakes happen and consequences occur and in government one thing leads to another so the whole issue of privacy then that even with the best intentions with privacy compliant procedures, there is no getting around the fact that the more data that is held and the more creatively it is used and the more it is shared around, the greater the risks to privacy even with controls of best practise."

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### **David H. Flaherty**

"Anonymity is a fundamental component of the right to privacy and data protection for individuals in their relations with others and with the state. As much anonymity as possible needs to remain available as a conscious, possible choice for individuals in the 21st century.

There are more limits to anonymity now than before 9-11 for reasons that are lamentable but acceptable in Western democratic societies. But that should not mean that we have to create, or live in, surveillance societies in which we are watched most of the time.

There are acceptable limits on anonymity in the interests of protecting the public good, national security, and law enforcement. There have always been such limits in civilised societies.

It is completely understandable that we should have to identify ourselves in order to secure certain service. But the choice of how to do so should be left to the individual to the fullest extent possible.

In summary, the preservation of anonymity, as a state of privacy, is essential to the protection of dignity of the individual and the promotion of human rights. The right to anonymity is a core human value and intrinsically related to privacy and data protection."

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### **Paneer Selvan Ramasamy**

"Our identity card system was started in 1948 by the British colonial administration. The identity card is part of a civil registration system which comprises births and death registration, identity card registration, citizenship registration and passport issuance. The identity card system is now well accepted in Singapore. Today, it is used not only in transactions with the Government but it is also used by the private and people sectors. Singaporeans appreciate the convenience that the identity card system and the electronic database of personal data bring about. For example, Singaporeans can now apply for a passport online."

"The identity card system and people database facilitate public sector data sharing so as to enhance convenience and effectiveness in the delivery of public services. Second, data sharing can also be initiated by Government agencies for specific services in the individual's interest. Singaporeans as a whole appreciate the convenience of data sharing. In a recent public survey, 86% of Singaporeans agreed to Government agencies sharing relevant information in order to provide public services more efficiently and conveniently. 80% said that they trusted the Government to protect their personal information when sharing data."

"We do not have a general privacy law in Singapore, but we do have close to 100 statutes providing statutory secrecy and confidentiality provisions applicable to the public sector."

"One of our e-Government objectives is to enable our citizens to be able to transact electronically feasible services. Today more than three-quarters of our feasible services can be transacted online. Second services where the identity of the user needs to be verified. If the e-service does not contain critical information, single factor authentication is sufficient. Third, e-services, which involve confidential information, require two-factor authentication. The most common authentication mechanism involves a smartcard with a digital certificate."

"Our experience is that Singapore's identity card system and people database has enabled us to provide public services with greater efficiency and convenience for our citizens. Data sharing between Government agencies premised on user consent allows us to leverage the power of info-comm technologies to provide more joined-up services to the public. A strong data protection regime based on legislation, high level principles and detailed processes is important to continue to maintain the high level of public trust and confidence in the system."

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### **Stefano Rodota**

"In the second half of the past century, the United States presented Europe with a major gift namely, independent authorities and/or agencies and/or commissions. This type of institution, which was practically unknown to European legal systems, had long become a basic feature of American administration. It is sufficient to refer here to the Federal Trade Commission, the Security and Exchange Commission, the Federal Communication Commission, and the Food and Drug Administration. If one considers the European situation nowadays, one may actually be taken aback at the extent to which independent authorities have been applied to in almost all European countries for the past few years also in sectors that remained beyond the pale of the American experience, such as, for instance, data protection. Actually, the revolution of independent authorities has been referred to by some commentators. To apply this model, scepticism and mistrust had to be overcome."

"Unlike supervisory authorities competent for other sectors, data protection authorities may be regarded as the interlocutors of all citizens. Their task consists in safeguarding a right that each of us, irrespective of formal statements, feels with growing intensity to be a fundamental right."

"This is a difficult right at a time when new security requirements arise and pressure is exerted by many businesses. Thus, supervisory authorities and their members are faced with a difficult task ñ that of reconciling different interests though by firmly defending basic principles. They know that one of the leading fundamental rights of this new century has been committed to their daily work. Patience and courage will be their familiars in the next future, just as they were in the past decades."

"If setting up supervisory authorities has been considered necessary in order to ensure, for instance, the proper operation of securities markets, these authorities are all the more necessary in order to ensure that the social and institutional framework is adequate with a view to protecting this new fundamental right. It is necessary to ensure that all the prerequisites are met for effective data protection. This is why it is necessary to rely on bodies that are capable to view data protection in its entirety and prevent, above all, the occurrence of factual or legal circumstances endangering it. Data protection commissions can be regarded as the necessary counterparts of public and private entities. In many cases they are to be heard before implementing technological and/or organisational innovations; under specific circumstances, they have the power to authorise them or not. They have auditing powers, which are necessary for them to carry out preventive controls so as to avoid dangerous breaches of data protection affecting both individuals and the community as a whole. They represent a fundamental reference for citizens and contribute to raising and developing public awareness with their activities. They can promote common policies by businesses as well as the adoption of a new, enhanced generation of self-regulatory codes."

"The achievement of these basic objectives cannot be expected to be the spontaneous outcome of social and economic mechanisms."

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### **Orson Swindle**

"The United States has been a leader in developing new technologies to support the Internet infrastructure and electronic commerce. As electronic commerce becomes more global, however, there are concerns about how new business models and new technologies might compromise the privacy interests of individual consumers. Some consumer advocates have argued that U.S. consumers need more commercial privacy regulation and have endorsed imposing a privacy regulatory regime on the Internet. Others state that the current legal regime is sufficient to protect consumers' privacy interests in today's evolving economy."

"The issue of privacy has been a focus of debate for years, well before general public use of the Internet. In the United States, for example, concerns arose in the 1960s and 1970s about the government's use of citizens' personal records. The response to these concerns was the passage of legislation that would oversee information management practices at the government (public sector) level. More specifically, the Freedom of Information Act (FOIA) and the Privacy Act of 1974 prescribe the manner in which government agencies may collect, manage, and disclose individual records. The Privacy Act of 1974, in particular, mandates that agencies shall collect and store information only about subjects that are appropriate to their mission or task. Government agencies must also maintain the accuracy of their records and take appropriate safeguards to ensure the security of their information."

"I believe that the best means of protecting consumer privacy without unduly burdening e-commerce is through a combination of industry self-regulation and aggressive enforcement. This approach is flexible enough to respond rapidly to technological change and to the tremendous insights that we are gaining from the ongoing dialogue among government, industry, and consumers on privacy issues."

"Comprehensive government regulation also will likely have the effect of redirecting industry efforts and resources to a "compliance mode." Investment, creativity, and ingenuity will take a back seat to a "government solution." The application of creative thinking, rapidly changing technology, profit-motivated investment, and good leadership to these evolving privacy issues would likely give way to the relatively static approach of doing what the government decides is best. In the long run, any system of privacy protection is likely to suffer from such a change in approach. We must and can do better than this."

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### **Elizabeth France - Plenary D**

*"I have asked Stephen Lau to do the impossible and summarise the conference from his perspective. I welcome him now."*

### **Stephen Lau**

"I am honoured to be invited to the conference stage. Before I arrived I thought a lot of my colleagues and friends would not have been to Cardiff before, but to my surprise a lot have. For example, David Flaherty and Alexander Dix. You might have thought that as I come from South East Asia, this would mean that I have not been here before, but to me Wales is like coming home. Forty years ago I was here in North Wales in a town called Dolgellau. I had a wonderful time in Wales. It was the first time I'd seen snow, coming from a tropical place, and I liked hymn singing in this little chapel. I also learnt that Welsh rarebit is also cheese on toast!"

"I am quite apprehensive that I can't measure up to the task at hand - that I would be able to make a critical comments about the proceedings."

"Charles Dickens came to the rescue. I remember the opening lines from his

novel "A tale of two cities", 'it was the best of times, and it was the worst of times'. So I'd like to construct where appropriate a summary in this vein."

"I was requested to give a summary based on a personal impression. I now speak to you as a former commissioner, rather than management of my company EDS. The objective of this conference was to discuss topical issues on privacy through discussions. To provoke and be provoked - to challenge and to be challenged."

"Regarding the first plenary session on data sharing it could be argued that it is the best of times for data sharing. The benefits of planning in terms of credit reference, prevention and detection of fraud to the protection of security, and security and protection of sovereignty from terrorism. It is also arguably the worst of times with the misuse of data, excessive data retention etc. Professor Perri 6 spoke on a survey on public trust which confirmed perceptions of citizens in the UK - this talked about the perceived benefits of data sharing but also perceptions of risk. 'If you have nothing to hide, it should not be a concern'. Professor Perri 6 concluded that seamless Govt and data privacy is neither friend of foe, but more uneasy neighbours."

"Second speaker Dr Steve Hutchinson, discussed E-Government initiatives in a Victorian state Government. I had a few observations; one was his reverence to trade-off between efficiency and privacy. My concern was that primary basis for determination should not be a trade off, should be not a compromise but an object - in my experience this is possible."

"Privacy is very personal. Even with the realisation of the lower level of efficiency, we should have the option in this important information age of choice."

"Government argues that choice means two less productive uses of scale financial and mental resources. I submit to you that this is not the crux of the issue. The issue is to instil public trust through data protection principles. The citizens have to trust that they should choose what the Government wants them to choose. The question whether data protection principles by preventing information sharing hold back both government and government efficiency is in my mind a myth. Data sharing can be achieved with consent, though there are some exceptions."

"The second topic is anonymity - has it a place amidst all the reality? David Flaherty eloquently argued the right to remain anonymous after 9/11. As much anonymity as possible needs to be remain available. There are more limits on anonymity. But it is the best of times, a status of anonymity as a value and the preservation of anonymity is essential to the protection to the dignity of an individual, and a core human value."

To cut a long story short, I want to say that to the question whether there is a myth to obtaining anonymity - it is a core human value but only in the context of e-commerce.

"The last topic 'effective data protection, can it be delivered through independent supervisory authorities - myth of reality'? Professor Stefano Rodotà talked about the effect of mechanism to maintain democratic progress. Commissioner Swindle presented various status old secretarial laws."

"Charles Dickens gave me the inspiration to construct the presentation around the opening lines, but I couldn't remember the rest of the paragraph. So yesterday I went to buy the book. Reading the opening paragraph I was surprise by the appropriateness of this paragraph regarding the anniversary of 9/11. "It was the best of times, it was the worst of times. It was the age of wisdom, it was the age of foolishness. It was the season of light, it was the season of darkness. It was the spring of hope, it was the winter of despair. We had everything before us, we had nothing before us". I do believe in the time of the human spirit and on this day of the anniversary, I believe we are at a crossroads and can look forward to the season of light, a spring of hope and we have everything before us."

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**Rear Admiral Nick Wilkinson CB**

"About this time last year, even if we were not in New York, many of us were witnessing in real time TV the events which we have just commemorated. These awful images were repeated all around the world. It was a defining moment for the USA but has touched many people from around the world."

"For the rest of us, nobody could have been more shocked and so deeply moved by the personal tragedies, victims and their families. A few months after September 11th, I was at a leading political conference where we were talking about the aftermath. Someone made a comment that the world will never be the same. I asked "Do you really believe the world has changed since September 11th"? The speaker looked shocked at the question. Perhaps back then it was too close to the day in question to really know what was going to happen. The question is now more relevant for data protection and privacy commissioners, security, freedom of information and human rights."

"My role is an unusual one. I'm not a politician and not responsible for any Government department. I'm in an independent committee. Our role is to give advice to all media in Britain of matters to do with national security."

"Judgements about security is often a grey area and this is often where your world and mine overlap. In the UK, national security is mentioned in many acts of parliament. Many are quite new. All but one of them are linked to the events of September 11th and it proves that the world has changed since September 11th."

"As an independent practitioner, I have opinions on this and how it has affected mine and your roles. Which brings me back to the question - has the world really changed since the events of last year?"

"Although National security has been increased in America, the degree of the threat in America is almost unchanged. There is a network of terrorist still planning similar attacks. Outside America there is also a great threat to American personnel which is of as much of a threat as it was before. That was a threat that was recognised well before 9/11. For most of us too, the threat has not changed that much. By my reckoning during current lifetimes, about two thirds of the countries represented here have been invaded or occupied and a third of us have lived through significant terrorist campaigns. As a military man for 40 years I had to make constant checks for bombs, many of my fellow citizens have been killed or maimed by these attacks. Ironically the worst of that terrorism is funded by individuals which we have particularly close relationships with."

"The point I'm making is that whatever perception we have that the threat to security has changed, the actuality of the scale of the threat has not changed that much. We live in a world that is fairly dangerous, but we did before the events of last year. Intelligence and security organisations are better funded than a year ago, however much more is known about them."

"The principles of your work has not changed or weakened. Your role has become even more important. The reasons are at a time of security clampdown, there is always a question on Govt to satisfy some constitutional rights, rights which are easily removed in a crisis which we must then take care to regain. Unless people like you continue your work. Secondly, your role is more important now that terrorist plans are dependent on winning hearts and minds of people all over the world, from which terrorist draw their support. One very important element is that it offers them a better life, which most of us enjoy, but weakens their rights to individuality and privacy. As always in your work, the perception is to find a balance between security and freedom, the Government and individuality, privacy, and the use of data for the benefit of the greater public. In a civilised world the principles and importance of your work must be a constant."

"So as someone deeply involved in matters of security, and as an assistant of the UK and democratic world, I salute you and wish you all the success in your vital work on behalf of citizens everywhere in finding the right balance of collective needs and the rights of individuals."

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