

REPORT
OF THE
INTERNATIONAL ENFORCEMENT CO-ORDINATION WORKING GROUP
TO THE 36th INTERNATIONAL CONFERENCE OF DATA PROTECTION AND
PRIVACY COMMISSIONERS CLOSED SESSION
MAURITIUS 2014

Co-chairs: The Information Commissioner's Office, United Kingdom and
The Office of the Privacy Commissioner of Canada

BACKGROUND

In 2007, at the International Conference in Montreal, a resolution on International Co-operation was adopted. It:

- encouraged commissioners to further develop their efforts to support international co-operation and to work with international organizations to strengthen data protection worldwide, and
- welcomed the adoption of the Organization for Economic Co-operation and Development (OECD) Recommendation on Cross-border Co-operation in the Enforcement of Laws Protecting Privacy.

In 2011, at the International Conference in Mexico, a resolution on Privacy Enforcement Co-ordination at International Level was adopted. This established three workstreams. One was to set up an international enforcement coordination working group (IECWG) to create concrete mechanisms to take international enforcement coordination forward; the second was to hold a global annual event to discuss international enforcement coordination; and the third encouraged all data protection/privacy enforcement authorities (DPAs/PEAs) to undertake some work internally to understand any legal, technical or political barriers they may have to engaging in international enforcement coordination. Christopher Graham and Jennifer Stoddart, the United Kingdom and Canadian Commissioners, respectively, agreed to serve as co-chairs of the IECWG.

In 2012, at the inaugural international enforcement coordination event in Montreal, participants resolved to work on 10 recommendations to help drive forward international enforcement coordination. Subsequent events have been held in Washington (2013) and Manchester (2014).

Furthermore, in 2012, a Framework for Privacy Enforcement Co-ordination at the International Level that had been developed by the IECWG was presented to the

Closed Session of the 34th International Conference in Uruguay. The Framework included a Statement of Intent and six Coordination Principles.

In April 2013 at the second international enforcement coordination event in Washington DC, participants agreed that eight of the outstanding Montreal Recommendations be put into an Action Plan.

Also in 2013, at the International Conference in Warsaw, the mandate of the IECWG was extended to work with other networks to develop a common approach to cross border case handling and enforcement coordination, to be expressed in a multilateral framework document with a view to adoption at the 36th Conference. In particular, it was intended to build on the international framework document presented to the 34th Conference and on the work of GPEN to address the sharing of enforcement-related information.

RECENT ACTIVITIES

The third international coordination event in Manchester in April 2014 consisted of strategy meetings on the next steps for international enforcement coordination including the assessment of legal barriers to the development of the type of multilateral framework envisaged by the 35th Conference. This was followed by break-out workshops on sharing different practices on enforcement. Over 40 delegates participated from more than 25 different countries.

At the same time, and informed by discussion at the Manchester event, the IECWG has been working on the mandate of the 35th Conference to develop a common approach to cross-border case-handling and enforcement coordination expressed in a multilateral framework document. This takes the form of a "Global Cross Border Enforcement Cooperation Arrangement" and the rapporteurs are pleased to present this as a product of the collective thinking of the IECWG to try and address the gaps in international enforcement activity. The IECWG is pleased to present the Arrangement to the 36th Conference for its acceptance.

The purpose of this Arrangement is to encourage and facilitate all privacy enforcement authorities to cooperate with each other by sharing information, particularly confidential enforcement-related information about potential or on-going investigations and where appropriate coordinate their enforcement activities to ensure that their scarce resources can be used as effectively and efficiently as possible. Whilst the Arrangement is intended to provide a framework to facilitate information sharing, it is not intended to create legally binding obligations, override

other competing legal obligations that authorities might be subject to or compel participants to share any information.

FUTURE WORK

Given that the IECWG was only ever established as a temporary conference working group and that it has now fulfilled its mandates from the 33rd, 34th and 35th International Conferences there is no need for it to continue its work. However, the 33rd conference sought to ensure that there should be at least one opportunity each year for those interested in issues of privacy enforcement and coordination to meet. This need still remains valid. The events held in 2012, 2013 and 2014 have been particularly useful in bringing enforcement practitioners together from around the world to exchange and develop best practice in investigation and enforcement techniques. Whilst such annual events should have clear aims, and the benefits of them should be kept under review, they should, in principle, continue. As these events are held in the framework of the International Conference, oversight of them should fall to the Executive Committee of the Conference once the mandate of the IECWG has been concluded.

At the same time that the IECWG has been holding its annual events and developing the Global Cross Border Enforcement Arrangement, the Global Privacy Enforcement Network (GPEN) has been continuing with its mission of promoting cooperation between privacy enforcement authorities by:

- exchanging information about relevant issues, trends and experiences;
- encouraging training opportunities and sharing of enforcement know-how, expertise and good practice;
- promoting dialogue with organisations having a role in privacy enforcement;
- creating, maintaining and supporting processes or mechanisms useful to bilateral or multilateral cooperation;
- undertaking or supporting a range of other specific activities.

There is clearly overlap between the work that the International Conference has been engaged in through the IECWG and the work of one network in particular - GPEN. There are other several other networks also engaged in the enforcement area but the work of GPEN requires pressing attention; it is a global network, with substantial overlap in membership with the International Conference, and a specific focus on promoting international enforcement cooperation. The International Conference is though the long-established and recognised forum through which data protection and privacy commissioners worldwide come together to develop

policy and collective actions. It has a clear system of governance based on an annual meeting and an Executive Committee.

In order to avoid duplication of work and improve the consistency and the effectiveness of cross-border enforcement, it is desirable to develop a more harmonious relationship between these organisations. It is therefore desirable and timely for both the Executive Committee of the International Conference and the GPEN Committee to open exploratory discussions in which they can examine their respective roles and relationships with a view to considering options for bringing GPEN within the governance arrangements of the International Conference. This is in the interests of both organisations and their members without precluding the possibility for future discussions on enforcement by either of these two organisations with other networks.

However, these discussions must recognise the special nature of GPEN and the importance of continuing the contribution that it has made to date including the organisation of coordinated international enforcement activity such as the GPEN internet sweep. It is very important that even if the two organisations remain separate, a solution is found for them to work together in a more coordinated way.