



Strasbourg, 2 April 2012

**Multistakeholder Process to Develop Consumer Data Privacy Codes of Conduct
National Telecommunications and Information Administration**

Comments by the Council of Europe Secretariat

General observations

The Council of Europe¹ Secretariat welcomes the request for public comments on the multistakeholder Process to Develop Consumer Data Privacy Codes of Conducts launched by the National Telecommunications and Information Administration (NTIA) and wishes to seize this opportunity to share some general comments on the proposed issues and process.

The Council of Europe shares the view that multistakeholder process is a crucially important tool in the normative process of achievable, sound and workable standards.

For this particular reason, the Council of Europe which is currently modernising its main data protection instrument, i.e. the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereafter referred to as “Convention 108”), has engaged in an in depth and sustained dialogue with the various stakeholders concerned (public authorities, private sector, civil society, academics, etc.).

Considering the close similarities of the topics at stake in the NTIA’s initiative and the modernisation of Convention 108 (e.g. transparency, accountability, data security), the results of our consultation process can be of interest and should be highlighted:

http://www.coe.int/t/dghl/standardsetting/dataprotection/TPD_documents/T-PD-BUR_2011_01_%20MOS6%20Results.pdf

¹ The Council of Europe, based in Strasbourg (France), comprises 47 countries and seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other legal instruments on the protection of individuals, such as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108).

The Council of Europe Secretariat furthermore wishes to respond to specific sections of the request for public comments:

1. Consumer Data Privacy Issues to Be Addressed Through Enforceable Codes of Conducts

- While the importance of transparency as a crucial element of the protection of the individuals' privacy is fully acknowledged (a new article on the transparency of data processing is among the modernisation proposals for Convention 108), it needs to be associated with other fundamental data protection principles, as for example data security, privacy by design, purpose specification, data minimisation and remedies, that may also fall within the scope of codes of conducts.
- The topics proposed by types of technical environment of data processing (mobile device applications, location-based services, and cloud computing services) are highly topical and important in light of the current implications of such services on individuals' privacy.
- With regard to mobile applications specifically, it was indeed recently felt necessary to address their implications on the exercise and full enjoyment of fundamental rights and freedoms. The Steering Committee on Media and Information Society (CDMSI), a Council of Europe intergovernmental cooperation body dealing with these matters, is currently preparing a "Draft Committee of Ministers declaration on digital tracking and other surveillance technologies". The initial version of the draft, which is still work in progress and will certainly continue to evolve in the normative process is accessible here :
[http://www.coe.int/t/dghl/standardsetting/media/CDMSI/CDMSI\(2012\)002%20tracking%20and%20surveillance_en.asp#TopOfPage](http://www.coe.int/t/dghl/standardsetting/media/CDMSI/CDMSI(2012)002%20tracking%20and%20surveillance_en.asp#TopOfPage)
- Biometrics, in diverse applications (such as fingerprints, facial recognition, voice recognition) could be considered as an additional area of interest to be addressed within the multistakeholder process of development of Consumer Data Privacy Codes of Conduct.
- Profiling (behavioural targeting) is also a challenging issue which could be included in the list of potential topics to be considered and it should be underlined in this regard that the Council of Europe adopted in 2010 a Recommendation on profiling and data protection. The Recommendation was the first text to lay down internationally-agreed minimum privacy standards to be implemented through national legislation and self-regulation:
[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec\(2010\)13&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Rec(2010)13&Language=lanEnglish&Ver=original&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383).

- Concerning online services directed to teenagers and/or children, the privacy impact of those services is crucial and while the deletion of traces left by this particular category of users was already highlighted in the 2008 Committee of Ministers Declaration on protecting the dignity, security and privacy of children on the internet, the Council of Europe will pursue its work on this important topic and looks forward to following and contributing to the one of the NTIA.
- Finally, two other areas of possible work worth underlining correspond to very recent pieces of work carried out by the Council of Europe (submitted to the Committee of Ministers for adoption on 4 April 2012) concerning on the one hand the protection of human rights with regard to social networking services, and on the other hand with regard to search engines.
- Regarding the factors which should be considered in selecting issues for the privacy multistakeholder process (question 2 of the request for comments), a key angle should be the risks and impact for individuals that may occur from the type of data processing considered.

2. Implementing the Multistakeholder Process

- Closer interaction between various national actors and regional organisations will become increasingly necessary in light of the fact that most of the considered topics (mobile apps, cloud computing, online services etc.) have an inherently cross border nature and should therefore be dealt with in a global and transversal perspective. The Council of Europe, representing 47 member states, is a key partner in any multistakeholder dialogue. The Organisation is available to be associated to this process (and others that may occur in the future) and to share its expertise are to be underlined.
- The request for comments referred to examples of multistakeholder platforms such as the Internet Governance Forum (IGF), which is a valuable illustration of a multistakeholder process in the field of Internet policy development. An emerging trend in the IGF context should nevertheless be kept in mind: this multistakeholder platform has been facilitating discussions, not delivery, and considering the pragmatic aim pursued here, namely the delivery of codes of conducts, careful attention should be given to the process which needs to be result-oriented.
- With regard to modalities encouraging the effective participation of stakeholders in the process, remote participation to meetings and virtual meetings are essential in order to guarantee a full representation of the different angles of society, including less economically strong actors which may not have sufficient resources to take part in in-person meetings. If such meetings take place, it will be important to provide succinct information for those who could not attend. Hence, abbreviated records would be appropriate.

Finally, in respect to possible examples of existing consensus based multistakeholder processes, we wish to signal the Internet Governance 2012-2015 Council of Europe Strategy which has been recently adopted by the Committee of Ministers after consultation of all stakeholders concerned and an inclusive drafting process:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM\(2011\)175&Language=lanEnglish&Ver=final&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM(2011)175&Language=lanEnglish&Ver=final&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

The strategy identifies priorities and set goals for the next four years to advance the protection and respect for human rights, the rule of law and democracy on the Internet. It underlines that the bulk of the actions to be accomplished will be developed by animated multi-stakeholder dialogue forums and co-operation arrangements between governments, the private sector, civil society and relevant technical communities. Other relevant examples of consensus based multistakeholder processes within our Organisation are the “Guidelines for Online Game Providers” which were developed by the Council of Europe in coordination with the Interactive Software Federation of Europe (ISFE) and provide a benchmark for online games providers and developers, and the “Guidelines for Internet Service Providers”, developed by the Council in cooperation with the European Internet Service Providers Association (EuroISPA), recommending that ISPs ensure that information is available to end-users concerning the risks of privacy, security and freedom of expression.