



Privacy regulator launches consultation on draft Code of Practice on personal information online

The Information Commissioner's Office (ICO) has launched a consultation on a new draft Code of Practice for organisations that gather personal information online.

The draft Code aims to provide organisations with practical guidance on how to protect individuals' privacy when collecting personal information online, and how to comply with their obligations under the Data Protection Act 1998.

The publication of the draft Code is timely – we are getting more and more reliant on the internet in our personal and work lives. The increasing use of user profiling, activity monitoring and cloud computing facilities presents ever-greater risks for businesses seeking to comply with their obligations under the Act. The draft Code seeks to set out comprehensive recommendations for handling personal data properly but, unfortunately, sheds little light on some of the issues which need it most – the concept of "personal data" itself, behavioural advertising and the use of internet cookies.

The draft Code encourages organisations to give individuals a greater degree of control over the information they provide, by providing clear privacy choices and making it easier for users to delete personal information after browsing sessions. Speaking at the launch of the consultation, the Information Commissioner, Christopher Graham, made clear the ICO's intention, saying,

"People should have control over what happens to their personal information online whether it's correcting inaccuracies, deleting profiles or choosing the privacy settings that suit them."

Elsewhere, the draft Code suggests practical measures for compliance with the principles in the Act of fairness and necessity when handling personal data. Organisations are

reminded of the need to retain control of data and to demarcate their respective responsibilities, particularly in complex arrangements involving publishers, content providers and advertisers, or where outsourced cloud computing services are used.

As a high level document, the Code is not designed to answer every question that businesses have, but it has several shortcomings which may or may not be sorted via the consultation process.

Firstly, the Act and the Code apply to "personal data" but the concept remains ambiguous. The draft Code states that "real world" identifiers, such as names and addresses, are subject to the Act but in online contexts, where the form of identification may be less obvious, the situation can be unclear. Cookies and the analysis of Internet Protocol (IP) addresses can allow the accumulation of information which may relate to an individual or may relate only to the device used to go online. Unfortunately, the draft Code does not venture to advise whether or in what contexts that sort of information will be classed as "personal data". Whilst acknowledging the practical difficulties of doing so, the Information Commissioner does say in the Code that it is good practice to treat all information collected via cookies or IP addresses about users' online activity as personal information.

Secondly, in relation to behavioural advertising, the draft Code encourages organisations to ensure that individuals are given a clear explanation of how their information is used and how they can turn off the targeting and profiling process. However, faced both with lucrative marketing opportunities and with pressure from consumer groups over invasive profiling, firms will undoubtedly seek guidance on what they can do with personal data and, when they are working with other organisations to deliver information

through a single portal, what the relative responsibilities of each of the organisations involved are.

Thirdly, in the context of providing greater privacy choices for individuals, the draft Code cites the ICO's own guidance on the right to refuse internet cookies contained in the 2002 E-Privacy Directive. This will be of little comfort to firms concerned about the potentially far-reaching effects of the new EU Directive requiring users' consent to cookies, which UK legislators will have implemented by 26 April 2011.

Any practical guidance on this increasingly complex subject is to be welcomed, but the ultimate value of the Code will depend much on the outcomes of the consultation process, which runs until 5 March 2010. Firms seeking clarity should speak now.

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