



Data Protection

Billy Hawkes
Data Protection Commissioner

Irish Human Rights Commission
20 November 2010

An Coimisinéir
Cosanta Sonraí  **Data Protection
Commissioner**

Data Protection – a Fundamental Human Right

- *Implicit* Right to Personal Privacy under Irish Constitution – Article 40.3.1
- *Explicit* Right to Personal Privacy under Article 8 of 1950 *European Convention for the Protection of Human Rights & Fundamental Freedoms* [ECHR]
 - *ECHR now indirectly part of Irish law due to ECHR Act 2003*
- *Explicit* Right to Data Protection under EU Treaties – Lisbon Treaty and EU Charter



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EU & Irish Legislation

- | | | |
|---|---|---|
| • Data Protection Directive 95/46/EC | ➔ | • Data Protection Acts 1988 & 2003 |
| • Electronic Privacy Directive 2002/58/EC | ➔ | • EC Electronic Privacy Regulations 2003 (SI 535/2003) and 2008 (SI 526/2008) |
| • EUROPOL etc | ➔ | • Corresponding Acts |
| • Police & Justice Decision 2008/977/JHA | ➔ | • (to be transposed) |

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Scope/Jurisdiction

- **All Forms** of “personal data” (data that can be linked to a living, identifiable individual), held by
- **All Organisations**
 - **Police/Security included in Irish Law - Not fully covered by EU Law (but change post Lisbon Treaty)**
 - **Internet Companies – subject to EU Law?**

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Data Protection Rights

- | | |
|--------------------------------|----------------------------|
| 1. Fair obtaining & processing | 5. Accurate, up-to-date |
| • <i>Consent</i> | 6. Relevant, not excessive |
| 2. Specified purpose | 7. Retention period |
| 3. No disclosure | 8. Right of access |
| • <i>unless “compatible”</i> | |
| 4. Safe and secure | |

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Restrictions/Other Laws

- Law Enforcement/Security
 - *Data Retention/Interception of Communications*
- State Interest
 - *Data Sharing*
- Freedom of Expression
 - *Media Exemption*



Lisbon Treaty

Article 16 Treaty on the Functioning of the Union

- 1. Everyone has the right to the protection of personal data concerning them.
- 2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data.
- Compliance with these rules shall be subject to the control of independent authorities.



EU Charter of Fundamental Rights: Article 8

- **Protection of personal data**
 - 1. *Everyone has the right to the protection of personal data concerning him or her.*
 - 2. *Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
 - 3. *Compliance with these rules shall be subject to control by an independent authority.*



Future Prospects

- New EU Legislation
 - *Human Rights Basis*
 - *Include Police/Justice*
 - *Data Breach Notification?*
 - *Focus on "Accountability"?*
 - *Internet Companies?*