

Thursday, 22 April 2010

Ms Cecilia Malmström  
Commissioner for Home Affairs  
European Commission  
Rue de la Loi 200  
B-1049 Brussels

**Subject: A call for coherent data governance**

Dear Commissioner Malmström,

Computing technologies are evolving particularly rapidly, and the advent of the cloud and other service models are transforming traditional business in many respects. As enterprises, governments and individuals all seek to reap the benefits of this computing revolution, users and service providers are also beginning to process and store ever-greater amounts of personal and business data. As a result, we – governments, industries and users – are facing new challenges, such as how to keep this data secure and private, and how to protect it from misuse, and under what circumstances the data can be accessed and by whom.

The EU is carefully considering how best to preserve privacy and security in this new world, as are other countries and multilateral bodies<sup>1</sup>. The EU has, for example, started to look at the revision of its privacy framework, including privacy-related provisions impacting law enforcement and cross-border exchanges of data. At the same time, the EU is also engaged in on-going discussions around data security, cybercrime, data retention, and law enforcement use of data.

These various initiatives offer important opportunities to realign existing frameworks with the rapidly evolving ways in which data is stored, transferred and shared in the new computing paradigm. Such realignment is important to ensure that the EU has the right regulatory framework to promote ICT innovation and to protect users. Currently, for example, the regime applicable to data access is unclear and fragmented. National authorities, confronted

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<sup>1</sup> Examples include the revision of the OECD guidelines, the revision of the Council of Europe's 108 Convention and the Madrid Declaration.

with the challenge of online crime and the use of the Internet in connection with threats to public safety and national security, increasingly are focused on obtaining access to user data held by service providers in other markets. There are, however, no universally agreed rules governing such access by law enforcement – and even in the EU, the rules are often unclear in their scope and application. This creates confusion among service providers and users as to who is legally entitled to access data, and no doubt impedes the efforts of law enforcement to investigate crimes. It also creates risks to user security.

There is similar confusion regarding data retention obligations. While the EU has been clear that the Data Retention Directive applies only to those engaged in a specific set of activities (electronic communications services), Member States have sometimes sought to extend the Directive's application to capture other activities. This challenge has been compounded by the fact that the Directive permits Member States to impose retention periods ranging from 6 to 24 months. The result is that service providers are increasingly subject to divergent, and at times conflicting, rules governing data retention.

This thicket of competing and conflicting laws within the EU and internationally presents a significant obstacle to the delivery of new pan-EU and global services that meet users' reasonable expectations of privacy and enable law enforcement agencies to fulfil their lawful need to access data for investigations and prosecutions. Companies whose activities span multiple markets increasingly face a legal quagmire in their efforts to comply with the law.

The Commission is currently rolling out the Stockholm Programme and beginning to develop its Digital Agenda. A Communication on the EU's security strategy is also underway, as is a re-examination of the EU's data retention and data protection regimes. These initiatives provide exciting opportunities to enhance the coherence of the rules relating to the retention, protection and security of data of data, as well as to jurisdiction over and access to data within the European Union, and beyond.

DIGITALEUROPE calls on the "Stockholm" and "Digital Agenda" Commissioners to join forces to create a genuine Digital Single Market governed by a coherent set of rules that both protect user privacy and security and promote ICT sector innovation.

Recognizing that governments and the private sector have a shared objective and responsibility to protect the privacy and security of the personal information of individuals in their possession, DIGITALEUROPE proposes the following recommendations for further improvement:

- First, a careful analysis, in coordination with the ICT sector and other stakeholders, to identify those areas where the rules governing data privacy, security, retention and jurisdiction need to be made more coherent or otherwise reformed.
- Second, governments should develop a concrete and coordinated strategy related to government access to and use of private sector user and corporate data that will protect the privacy and security of that. Governments should establish and articulate clear rules and transparent processes related to government access to and use of information providing companies with the needed clarity and certainty to adapt corporate policies and practices without undue burden on existing business practices or potential innovation.
- Third, close cooperation with third countries at bilateral and multinational level to achieve greater international consensus and harmonization on these key issues.

DIGITALEUROPE remains available to work with your designated experts on the implementation of our recommendations.

Yours sincerely,



Bridget Cosgrave  
Director General

Cc: Ms Viviane Reding, Vice President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship  
Ms Neelie Kroes, Vice President of the European Commission and Commissioner for Digital Agenda  
Mr Jonathan Faull, Director General, DG Justice, Freedom and Security  
Mr Robert Madelin, Director General, DG Information Society and Media  
Mr Jan Ostoja-Ostaszewski, Cabinet Member, Vice President Viviane Reding  
Ms Lorena Boix Alonso, Deputy Head Of Cabinet, Vice President Neelie Kroes  
Mr Søren Schønberg, Cabinet Member, Commissioner Cecilia Malmström

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**DIGITALEUROPE** ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 60 leading corporations and 40 national trade associations from all the Member States of EU; altogether 10,000 companies with 2 million employees and €1,000 billion in revenues. You can learn more about our activities via <http://www.digitaleurope.org>

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