

U.S. Says It Won't Support Draft Transborder Data Pact

By Jake Kirchner

CW Washington Bureau

WASHINGTON, D.C. — The State Department has notified the Council of Europe (COE) that the U.S. is not prepared to back the present draft of the COE International Convention on Data Privacy.

In a position paper presented at a recent meeting of the COE committee drafting the agreement on transborder data flow and personal privacy protection, the State Department said the U.S. finds certain provisions of the agreement troublesome and unacceptable.

The U.S. position paper, not yet made public, reportedly was received with disappointment by the committee members, who had hoped for a more favorable U.S. response to the draft agreement.

The U.S. told the committee at the Oct. 16 meeting at COE headquarters in Strasbourg, France, that "the draft convention does not fit our conception of what an international agreement should be like at this stage of the game," according to Morris H. Crawford, director of the State Department's Office of Science and Technology Affairs.

The present working version of the agreement is "inadequate," Crawford said, because it addresses only records subject to automated data processing. The U.S. is working toward legislation to protect individual records and personal privacy regardless of the method of storage or processing.

'Most Telling Defect'

But "the most telling defect of the Council of Europe's conception of a convention," according to Crawford, "is that it would require, in our reading of it, a fairly elaborate enforcement mechanism," a mechanism that "seems excessive" to U.S. policymakers.

Countries that sign such an agree-

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ment would have to institute elaborate policing measures to ensure reciprocal data protection from other signatories, he said.

The State Department is also concerned about an enforcement provision in the draft that assumes a "central authority" would be set up in each country to guarantee compliance with the data protection law.

There would be "a potential for the central authority to gather into itself large amounts of personal information with no restrictions" on its use, according to the author of the U.S. position paper, Lucy A. Hummer, State Department Deputy Assistant legal advisor.

The draft agreement envisions the "central authority" in each country acting as a clearinghouse for all requests from citizens of foreign countries for information concerning their personal records maintained abroad. The entity would also be responsible for investigating alleged misuses of personal records.

Such an entity, Hummer pointed out, could be a considerable threat to personal privacy. Although the U.S. would not agree to such a proposal, according to Hummer, it is in line with the thinking in European countries, where governments tend to act as "pater familias," assuming extensive social responsibility for their citizens.

The U.S. also has strong objections to the draft convention's "elaborate registration requirement," Hummer said. The COE committee is recommending government registration of individual data files and record systems, a position the U.S. finds "troublesome" and contrary to the thrust of this country's privacy laws, she added.

Hummer would not speculate on what effect the U.S. position might have on the COE draft committee, pointing out the agreement is aimed only at European countries. But, she said, the COE does hope non-European countries will find the final agreement acceptable and become signatories.

Disagreement on Draft

The COE, comprised of 20 Western European countries, has been working on the data protection convention for several years, and more meetings on the subject are scheduled.

Crawford noted there is a "substantial area of disagreement" within the COE itself over the present draft of the convention. Considering the disparity of national legislation on privacy and data flow in Europe, the dissension is not surprising, he observed.

Explaining that COE members are trying to embrace the various national laws in one agreement, he said that "as a diplomatic problem, it is almost an impossible task they have set for themselves."

Although the COE might eventually produce a document acceptable to its member countries, if the present version is any example "the convention would have to be changed substantially for the U.S. to become a signatory to it," Crawford said.

The convention is still in the drafting stage and might very well undertake the "substantial changes" necessary to gain U.S. acceptance, he also noted.

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