

# Right to Privacy and Data Protection - Issues related to ICT for Inclusion

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# Overview

- Data Protection: a Fundamental Right
- EU Legal Framework for Data Protection
- Consent
- Some Issues for eInclusion



# Data Protection – a Human Right

- Part of Right to Personal Privacy
- Personal Privacy : necessary in a Democratic Society
- Not absolute: other necessary Rights on a Democratic Society ( e.g. Freedom of Expression, Rights of Others)
- What are the implications for ICT and e Inclusion?



# European Convention on Human Rights (ECHR)



- *Explicit* Right to Personal Privacy under Article 8 of 1950 *European Convention for the Protection of Human Rights & Fundamental Freedoms* (ECHR)
- Convention ratified by all 25 EU Member States and most other European countries

# ECHR Article 8: Right to respect for Private and Family Life



- *(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
- *(2) There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*

# Council of Europe Data Protection Convention



- 1981 Council of Europe *Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data* (in force October 1985)
- Response to perceived threat of ICT systems to individual right to privacy

# 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.*

# 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/EEA Directives



- Directive 95/46/EC *Protection of Individuals with regard to the Processing of Personal Data and on the Free Movement of such Data*
- Directive 2002/58/EC *Privacy and Electronic Communications*

# European Data Protection Rules: Free Flow of Personal Data



1. Fair obtaining & processing
  - Consent
2. Specified purpose
3. No disclosure
  - unless “compatible”
4. Safe and secure
5. Accurate, up-to-date
6. Relevant, not excessive
7. Retention period
8. Right of access
9. Independent Supervisory Authority

# Rights of individuals



- to fairness when giving information
- to get a copy of personal data
  - “right of access”
- to correct data if it is wrong
  - or to have data deleted
- to opt out of direct marketing
- Not to be subjected to automatic decision-making
- to complain to the Data Protection Authority

# Directive 95/46/EC: *Personal Data*

- Definition: 'personal data' shall mean
  - any information
  - relating to
  - an identified or identifiable
  - natural person ('data subject');
- an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity
- Wide definition confirmed in Opinion 4/2007 of EC Article 29 Working Party

# Directive 95/46/EC: *Processing*

- Wide Definition: not just collection
- 'processing of personal data' ('processing') shall mean **any operation** or set of operations **which is performed upon personal data**, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction



# Consent (1)

- **Article 7 – lawful processing**

“the data subject has unambiguously given his consent;”

- **Article 8 - The processing of special categories of data**

“the data subject has given his explicit consent to the processing of those data, except where the laws of the Member State provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject's giving his consent;”



# Consent (2)

- *“the data subject's consent' shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.”*
- Article 2(h) of Directive 95/46/EC

# Article 29 Working Party Guidance

- Electronic Health Records (WP 131: February 2007)
- Definition of “Personal Data” (WP 136: May 2007)
- Protection of Children’s Personal Data (WP 147: February 2008)
- Working Document on *E-Government* (WP 73: May 2003)



# Some Issues

- Does ICT use have to involve some surrender of privacy?
- Data Sharing – Limits of Consent for vulnerable groups?
- Right to Privacy and the Public Interest in Data to guide Inclusion Policies

