

Opower's position on the European Commission's proposal for a General Data Protection Regulation

About Opower

Opower is the global leader in behavioural energy efficiency and smart grid customer engagement. Opower works with over 75 utilities globally, including 8 of the 10 largest in the United States, with EDF in France and with First Utility in the United Kingdom, to deliver energy savings to nearly 15 million households.

Through September 2012, Opower has saved families over 1.5 Terawatt-hours, which is equivalent to about €140 million in householder bill savings.

Opower combines behavioural science techniques and data-analytics to engage householders and empower them to take greater control of the way they use energy by providing them with better information. We merge and analyse utility and third-party data streams to create individual customer profiles, and use those profiles to generate personalised insights delivered through the channels via which customers are most apt to respond (e.g. paper, web, mobile phones).

Opower's behaviour-based programmes generate sustained, verified, and cost-effective energy savings across all consumer segments, regardless of age, income, education, or relative access to technology. Our programmes also motivate customers to reduce their energy use during peak times and seasons—when it matters the most. For utilities with Smart Grid deployments, we promote customer acceptance of Advanced Metering Infrastructure (AMI) by clearly demonstrating its value to consumers.

Comments on the General Data Protection Regulation proposal

Opower would like to offer comments on two main areas of the proposal:

- 1) The legitimate interest of the controller to process personal data in the energy sector.
- 2) The need to include a definition of anonymous data

1) Legitimate interest of the controller - recitals 30 to 38 and Article 5(b)

This is a widely used and legally defined principle, and Opower strongly believes that the integrity of the current text cannot be undermined.

Opower believes that the meaning of "legitimate interest" of the controller should be clarified with respect to the electricity and gas utilities and distribution network operators.

Energy utilities and distribution network operators have traditionally taken a conservative approach to when and how they would allow processors to analyse customers' personal data. In order for data analytics firms such as Opower to operate in this industry, utilities must be comfortable that the use processors make of their customers' personal data fulfils their legitimate interests as indicated in the proposed Regulation.

To this aim, Opower recommends the inclusion of language providing clarification around the legitimate interest of energy data controllers (e.g. energy retailers, distribution system operators) and processors.

The proposed text is based on principles that have been successfully adopted in California¹ in 2010, which has been a leader in implementing smart grid technology while preserving consumer privacy.

Proposed amendment:

Recital (40) (new)

The processing of data to the extent strictly necessary for the purposes of ensuring that electrical or distribution system operators as defined in Directive 2009/72/EC and Directive 2009/73/EC can meet system, grid, or operational needs, or the implementation of demand response, energy management, or energy efficiency programs, provided that the electrical or gas undertaking or the distribution system operator has required by contract that the processor fulfils the requirements outlined in this Regulation.

2) The need to exclude anonymised data from the scope of the proposed Regulation

Some important services provided by Opower rely on the use of anonymised data. These include, for example, the comparison of energy usage of a data subject who receives information from Opower with usage of similar anonymised data, and the use of anonymised data for evaluating, monitoring and verifying the energy savings achieved through Opower programmes.

Recital 23 of the proposed Regulation excludes data rendered anonymous from the scope of the Regulation.

However, the proposal does not provide a definition of anonymised data, and an exclusion from its scope in the legally binding part of the text.

Proposed amendments

Article 4: Definitions

For the purposes of this Regulation:

(...)

4(3): ‘anonymised data’ shall mean information that has never related to a data subject or has been collected, altered or otherwise processed so that it cannot be attributed to a data subject.

Article 2: Material Scope

2(2): This Regulation does not apply to the processing of personal data:

2(2)(f): that has been anonymised.

¹¹ http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_1451-1500/sb_1476_bill_20100929_chaptered.html

APPENDIX

Opower's Approach to personal data protection

Opower implements an all-encompassing approach to safeguarding consumer energy data that exceeds legal standards in the US and helps preserve the fundamental right to personal data protection in accord with European Union Directive 95/46/EC.

- **Opower Data Principles:** Opower has proactively embedded Privacy by Design in a set of Data Principles that guide data, privacy and security practices at every stage of our business.²
Our approach already embraces the key principles enshrined in the proposed Regulation, namely:
 - **Right to transparency:** Obligates data controllers to provide consumers with transparent and easily understandable information about how data is collected, stored and processed.
 - **Principle of data minimisation:** Requires controllers incorporate privacy by design and protection by default, limiting activity to what is minimally necessary to achieve a purpose.
 - **Right to data access and data portability:** Gives consumers the right to obtain personal data in a commonly used electronic format and to transfer that data to competing service providers.
 - **Right to be forgotten:** Obligates controllers to destroy and no longer process personal data upon demand from the consumer.
- **Best-in-class security:** All data sent to Opower from its supplier clients is delivered through a secure ftp transfer, encrypted, and stored in compliance with SSAE-16 standards.
- **Safe Harbour certification:** Opower complies with the EU Safe Harbor Framework as set forth by the U.S. Department of Commerce and is a licensee of the TRUSTe Privacy Program.

² <http://opower.com/company/data-principles>