

*EASDP- the voice of, search and database publishing industry in Europe- owes its existence to the aspirations of European publishers who anticipated the importance of intra-European contact and cooperation. Meanwhile, it has become the nerve centre for year-round contact and the key representative for the industry, whose motto is “we provide Europe with contact and business information”. EASDP has some 130 members in 36 countries world-wide, including in the 27 EU member states and represents publishers, suppliers of products and services for the search and database publishing industry.*

### **THE EU REGULATION ON DATA PROTECTION**

*Specific comments from search and database providers*

*September 2012*

EASDP, representing 130 member companies active in Europe in the field of search and database publishing, welcomes the European Commission proposal to harmonise data protection rules in Europe, since a harmonised framework would ensure more legal certainty for businesses operating cross-border, which is already the case for many directory and database providers.

We would however like to draw your attention on three specific provisions enshrined in the Regulation which would be very problematic for directory and search providers in the EU, and for which we ask you to consider possible amendments. These provisions concern:

- (1) The definition of natural and legal persons and the related scope of the regulation
- (2) The relationship between the e-privacy directive and the data protection regulation
- (3) The right to be forgotten and the exemption of liability for third party usage of the data.

#### **(1) The definition of natural and legal persons and the related scope of the regulation**

Recital 23 and articles 2 and 4 give a definition of the personal data that is considered for the scope of application of the regulation. They both state that the personal data of a natural person is considered. EASDP members are mainly dealing in their directory databases with data coming from legal persons, eg in Yellow Pages or trade directories, and the data they are processing are coming with an established contract between the legal person and the provider. EASDP members welcome the proposal to apply the data protection regulation only to natural persons but would like to stress out that some particular situations might be difficult to assess, eg when a sole trader working independently may be considered as acting as a natural person. That is why EASDP would prefer to see a further clarification on the definition of a natural person, for example by amending **art 4 (1)** as follows:

*Art 4 (1): ‘data subject’ means an identified natural person, **not acting in his/her business capacity**, or a natural person who can be identified, directly or indirectly, by means reasonably likely to be used by the controller or by any other natural or legal person, in particular by reference to an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;*

#### **(2) The relationship between the e-privacy directive and the data protection regulation**

The e-privacy directive already determines stringent data protection rules for directory and database publishers. Many of EASDP members are falling under the scope of the Telecommunications directives and especially the e-privacy directive, which already requires that the user is aware of the inclusion of his data in directories and can oppose to it free of charge. These rules on consent have been working

quite well, enabling both the users to control their data and the provider to provide comprehensive directories. They therefore fear that the current regulation will override the existing telecom legislation and therefore also put an unfair burden on directory and database companies which also have to comply with universal service obligations and strict legal regimes, whereas their direct competitors are not as much regulated. That is why they are of the opinion that the e-privacy and telecommunication law should prevail.

EASDP therefore urges you to include in article 89 on the relationship of the Data Protection Regulation and the e-privacy directive a provision to ensure that article 12 of the e-privacy directive remains the key element of data protection for directory information, by adding the following element to **art 89**:

*1. This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC. It shall consider that Article 12 of the e-privacy directive (2002/58/EC) sets out the key elements of data protection relating to directories and that the applicable rule remains, that subscribers are given the opportunity to have their data included in a public directory.*

### **(3) The right to be forgotten and the exemption of liability for third party usage of the data**

Clarification is needed on the right to be forgotten to ensure that directory publishers are not responsible for the erasure of the data held by third parties. Article 17 paragraph 2 wants to ensure that providers do their utmost to prevent third party misuse of the personal data.

Even if the publisher is not made directly responsible to take out the links that are on the Internet because the data has become public after publication in a White Page directory, this article is still placing a high burden on the publishers as regards the use of personal data which is done by third parties. Publishers should be responsible to ensure any content they publish is done so within the parameters of the law, however seeking to extent this responsibility to any subsequent re-publishing done by third parties is unthinkable due to the idiosyncrasy of the Internet and the fact that it is very difficult, if not impossible, to have technical control over data that has been made public.

To put this in perspective, if a company grabs the directory publishers web pages without their permission and puts the information in their cache memory, lawful White Pages publishers would have to monitor that and to ask third parties who illegally copied the data to remove it. It is a great danger for the White Pages publishers, and they might decide not to take the risk and not publish White Pages anymore. This might endanger the universal service that constitutes the online White Pages, and which is laid down by the universal service directive.

EASDP would therefore urge you to amend **article 17.2** as follows:

*2. Where the controller referred to in paragraph 1 has made the personal data public, it shall take all reasonable steps, including technical measures, in relation to data for the publication of which the controller is responsible, to inform third parties which are processing such data, that a data subject requests them to erase any links to, or copy or replication of that personal data. Where the controller has authorised a third party publication of personal data, the controller shall be considered responsible for that publication. **This should only apply vis-à-vis recipients of data to whom the controller has transferred the data through an established contractual relation.***

If you would like more information on EASDP and its view on data protection, please contact Stephanie Verilhac, EU affairs officer at [stephanieverilhac@easdp.org](mailto:stephanieverilhac@easdp.org)