

Data Privacy Day Message

28 January, 2013



Dr. Kamlesh Bajaj, CEO, DSCI

It has been an eventful year for privacy protection even as technology and globalization have increased trans-border data flows. Individuals continue to put out more of their personal data on websites, and social media in return for free services and better user experience. To enable the individual to have more control of their data, both the EU and the US have studied their concerns, and come up with updated versions of legislation to protect citizens and consumers. The proposed *EU Data Protection Regulation* was released a few days

before the last Privacy Day in January 2012 – it seeks to make a single privacy law across the entire EU without nation-states having to adopt separate laws by their parliaments. It was followed by the *US Consumer Bill of Rights* in February 2012. Likewise, OECD also proposed its *Revised Guidelines for Privacy* in October 2012. APEC is also updating its privacy framework. ISO also continued to do some interesting work in privacy framework and related areas.

The EU and US drafts have been widely debated, and are expected to become laws after necessary legislative approvals in due course. These laws likely will adopt some of the new principles such as privacy by design, right to be forgotten, data minimization, among others. The essence of the privacy legislations globally has been the privacy principles, and the new data protection regimes will continue to emphasize them, with inclusion of new privacy principles or aligning of the old ones to the new developments. The focus, however, is on accountability of the data controller for privacy protection, not on the end user even though notice and choice continues to be important principles of these regimes.

On a different front, the US Senate rejected “Cybersecurity Act of 2012”, for the second time, over privacy concerns that it provided authorities and companies too much power to spy on users. Federal Trade Commission (FTC) announced the adoption of its long-awaited amendments to the Children’s Online Privacy Protection Act (COPPA), that includes tighter rules to protect children's online privacy by restricting the collection of data like the child's location, IP address, photos, videos, audio files etc. unless parents consent – though questions are being raised on its implementation. Also, California State Assembly passed the Location Privacy Act, providing privacy protection to the users, particularly mobile users, by curbing tracking without consent.

We prepared a position paper on the EU proposed Regulation, highlighting the burdens it will create for data controllers and data processors, especially in international data transfers. This was submitted

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to the EC, some Members of European Parliament, and some countries of the Council of Europe. This was also presented to some of the key EC policy makers, and associations such as Digital Europe and US AmCham for building a coalition that can help change some of the provisions in the draft Regulation that present challenges to the outsourcing industry. We also engaged with the EU at the level of DG Justice, through the Ministry of Commerce and the Department of Electronics & IT, for making them aware of the strong data protection regime in the context of India's adequacy under the EU Data Protection Directive. A white paper was prepared for this purpose.

Other parts of the world contributed equally to the evolving global privacy regime: Privacy law in Philippines got enacted; Singapore Parliament passed the Personal Data Protection Bill, expected to be enacted soon; Malaysia Personal Privacy Law came into force on 1 January'13; In Brazil, "Internet Bill of Rights" was adopted that provides framework for regulating the privacy of the Internet users; Chinese legislature passed Data Privacy Resolution in December; and Colombia too enacted Data Protection Law.

As we can see, the world seems to have suddenly woken up to address changing needs and grave concerns surrounding privacy protection. *India is not far behind.*

Planning commission had set up a committee under Justice A.P. Shah to come up with privacy framework in the light of projects like UIDAI and NATGRID; and the private sector invading the privacy of consumers. President, NASSCOM and I were members of the Shah Committee. The report was released in Oct'12. Its recommendations are based on the global privacy developments and the Indian scenario. It covers international Privacy principles, national privacy principles, rationale and emerging issues along with the analysis of relevant legislations from a privacy perspective. It also discusses enforcement concerns and suggests a co-regulation model for enforcement. The report has set the stage for creating a Privacy Bill for presenting to the parliament. Clearly, much has happened and we find ourselves at the cusp of both challenges and opportunities.

The emerging privacy regimes are likely to impact the way we operate in Cyberspace, both from consumer and industry viewpoint. Our practices will have to evolve, and privacy protection demonstrated to consumers, data controllers outsourcing to data processors in India; and to the regulators for building their confidence and trust. DSCI has built on its DSCI Privacy Framework (DPF[®]), which identified nine Privacy Principles - derived from globally accepted principles of privacy. The framework has been implemented with some organizations in the country, but the assessment piece, which is critical to understand and measure the success of what has been implemented, was missing. I'm happy to report that the Assessment Framework for Privacy (DAF-P)[®] was released in the Security Summit in Mumbai last month. It is in two parts – one is based on *Privacy Principles based Assessment*, while the other is based on *Assessment of Organizational Competence in Privacy*. This first one is intended to help organizations assess and improve maturity in the implementation of privacy principles across all the organizational processes that deal with personal

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information and in the process optimize their efforts while implementing privacy principles across global operations. To address the specific needs of the organizations having operations in India, this part of the DAF-P also contains an assessment questionnaire that has been designed to help assess compliance against the privacy principles prescribed under section 43A of the IT (Amendment) Act, 2008. This part of the DAF-P is intended for self-assessment only and does not provide for DSCI certification, whereas the second part is intended for achieving certification of privacy program in an organization.

Cutting-edge technology and innovation, resulting from global convergence, and trends and cultures such as Big data, analytics tools, social media, P2P (Peer-to-Peer) sharing, and Cloud Computing, have revolutionized the IT landscape, with concomitant privacy concerns. The economic value of data has risen tremendously and data is constantly viewed as lucrative goldmine by cyber criminals. DSCI continued to create awareness in privacy laws, principles and privacy programs based on global best practices by organizing conferences and seminars on contemporary topics of privacy bringing together the relevant stakeholders: individuals, governments, businesses, NGOs and academia.

Data Privacy Day presents an opportunity to understand the changing scenario, and think about ways of reaching out to consumers and end-users on the one hand; and to corporates and policy makers on the other hand. Continued education is essential. DSCI Chapter meetings will be organized in all the cities and discussions should be held on topics relevant to data privacy and other contemporary issues that impact privacy of individuals.

We created a desktop wallpaper last year, themed around Data Privacy, which was circulated to our member organizations and reportedly got published on nearly 3.2 Lakh desktops. This year, we plan to celebrate it with even more zeal and enthusiasm, with the hope that the importance of privacy protection will not be confined to Data Privacy Day only.

The tasks we do on a day- to-day basis are meant to serve not only our members, but the community at large. We remain committed in our efforts to build a regime that values privacy. We call on everyone to join hands & build a culture that values ethical behavior and respects Privacy. I urge all of you to actively contribute with your ideas and activities.