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Lyse Tele consultation response to the European Commission proposal for an ePrivacy regulation

Lyse Tele refers to the European Commission's proposal for an ePrivacy Regulation which the Norwegian Ministry of Transport and Communications sent out for consultation on the 2nd March 2017 with a deadline for responses of 24th March 2017.

Given the short timeframe to the consultation Lyse Tele is submitting high-level comments to the proposed regulation. We have chosen to respond in English as that is the language of the documents sent out for consultation.

ePrivacy regulation and General Data Protection Regulation

The European Commission acknowledges in its consultation documents that the current ePrivacy directive has not kept pace with technological developments in the electronic communications industry, and that this has resulted in a void of protection of communications conveyed through new internet-based services. Lyse Tele believes the Commission is taking the wrong approach in subjecting over-the-top (OTT) and other operators to similar regulation as in the current ePrivacy directive. The electronic communications market today bears little resemblance to the market as it was 20 years ago when regulation concerning the processing of personal data and the protection of privacy specific for the telecommunications sector was brought into European law.

Furthermore, we see no indication that the technological developments in the communications market will slow down meaning that the changes made in the latest regulation will most likely be out of date again soon. We believe it would be much better to incorporate the regulation that is necessary in the ePrivacy directive in to the General Data Protection Regulation (GDPR) to ensure full horizontal harmonization in privacy regulation across all sectors. Given that the data protection directive has recently been revised, it is a great shame that ePrivacy is not part of the new GDPR.

If separate regulations for data protection and ePrivacy are introduced Lyse Tele believes it is of the utmost importance to both citizens and communications operators that the Commission is very clear in identifying which types of data are covered by each regulation. For example are the rules concerning location and cookie data governed by the ePrivacy regulation or the GDPR?

Enforcement of the regulation

Under the key points of the Commission's proposal it is written that:

“the enforcement of the confidentiality rules in the Regulation will be the responsibility of data protection authorities, already in charge of the rules under the General Data Protection Regulation.”¹

Lyse Tele would be interested to know which part of the regulation the Commission is referring to with the term “the confidentiality rules”. Does it mean that the entire regulation will be enforced by the Norwegian Data Protection Authority, or will certain sections be the domain of a different authority? We would appreciate some

¹ <https://ec.europa.eu/digital-single-market/en/proposal-eprivacy-regulation>



clarity on this matter, and would like to point out at this stage that a split role can potentially lead to an unclear interface and at worst overlap.

The “cookie provision” and regulation concerning unsolicited electronic communications

The Commission notes that two of the other main changes incorporated in the new ePrivacy regulation are to simplify the “cookie provision” and to strengthen the rules regarding unsolicited electronic communications. Whilst these changes in themselves may be sensible, we fail to see how they belong in regulation specific to electronic communications operators. The gathering of website data and the generation of unsolicited electronic communications are not the preserve of the electronic communications industry nor is it possible for electronic communications operators to monitor these activities. These regulations would more sensibly belong in a different regulation which ensured full horizontal harmonization in marketing activity across all sectors.

Yours sincerely

Lyse Tele

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