Steering Committee on Media and Information Society - CDMSI

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 18 April 2017   **CDMSI(2017)006**

CDMSI comments

on the Draft Recommendation of the Committee of Ministers to member states on Big Data for Culture, Literacy and Democracy

1.   The CDMSI examined with interest the Draft Recommendation of the Committee of Ministers to member states on Big Data for Culture, Literacy and Democracy, prepared by the Steering Committee for Culture, heritage and landscape (CDCPP).

2.   The CDMSI recalls at the outset the Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data, adopted on 23 January 2017, T-PD(2017)01. While providing general guidance on the data protection implications of big data, the Guidelines suggest the preparation of further data protection guidance tailored for various specific fields of application of big data. The CDMSI welcomes the present draft recommendation giving sector-specific guidance in the field of culture.

3.   The CDMSI further recalls the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108) which is the only legally binding international treaty in the relevant field, and of particular relevance as regards terminology and general principles. The CDMSI understands that the draft recommendation deals with personal data, as well as with non-personal data in the field of culture. With regard to personal data, consistency of terminology of the draft recommendation with Convention 108 and the Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data is recommended, paying special attention to the following:

   a)   the need for conformity of the definition of Big Data (Appendix II to the draft recommendation) with the Guidelines (part III, paragraph a));

   b)   in the absence of any definition of the new term "management" ("gestion" in the French version) (see, for instance, Appendix I to the draft recommendation, point 3, paragraph (g) subparagraphs (ii) and (iii)), the CDMSI would suggest to use the term "processing" ("traitement" in the French version) which is a standard term used for personal data;

   c)   the "collection" of data is included in the definition of "processing" [1] and it is therefore sufficient to solely refer to "processing", which includes the collection phase (see Appendix I to the draft recommendation, point 1, paragraph (a));

   d)   the term "automated processing of data" in Appendix II to the draft recommendation should be avoided as it is used for processing of personal data exclusively. It is therefore suggested to only use the term "algorithmic decision-making" (see Appendix I to the draft recommendation, point 1, paragraph (b)) to encompass

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[1] According to the Draft modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, "data processing" means any operation or set of operations which is performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data.

what is processing of personal data on the one hand, and what is a purely automated decision making on the other hand;

e)   the fact that no specific "right to be forgotten" (Appendix I to the draft recommendation, point 1, paragraph (d)) is laid down in the Council of Europe data protection regulatory framework since a combination of the principles of accuracy of data, limited length of conservation of data, right of correction and right to deletion of data amount to what is qualified in other data protection frameworks as a "right to be forgotten".

4.   The CDMSI would also draw the attention of the CDCPP to the following points:

a)   the reference to "individuals" (Appendix I to the draft recommendation, point 1, paragraph (a)) appears to carry with it ambiguity, taking into account that legal entities also enjoy protection of their rights enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms. Avoiding this ambiguity is of crucial importance in view of the fact that the term "cultural big data" embraces not only personal data of cultural nature, but cultural content in general. The CDMSI therefore suggests to delete the word "individuals" from the text;

b)   alongside with the term "cultural big data" as defined in Appendix II, the draft recommendation also refers to "[their] cultural data" (Appendix I, point 2). This creates ambiguity since the scope of the latter term is unclear (arguably, it may be said to refer to personal data only). For better clarity the CDMSI proposes to replace the words "their cultural data" with "cultural big data";

c)   the terms "conspiracy theories" (Appendix I to the draft recommendation, point 1, paragraph (h)) and "plot theories" (Appendix I to the draft recommendation, point 3, paragraph (h), subparagraph (ii)) appear to refer to the same phenomenon and therefore one of them could be abandoned. *(This difference does not exist in the French version NDLT)* ;

5.   Lastly, the CDMSI invites the CDCPP to consider the following proposals:

a)   adding to the preamble of the draft recommendation a reference to the Recommendation of the Committee of Ministers CM/Rec(2010)13 on the Protection of individuals with regard to automatic processing of personal data in the context of profiling;

b)   providing appropriate safeguards in Appendix I to the draft recommendation, point 2, paragraph (c) in cases where re-purposing is meant to cover personal data (which could be contrary to the purpose specification principle).