

## Data Protection Day: Joint High Level Meeting

### From European to International Standards on Data Protection

#### Remarks of

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Ladies, gentlemen, and distinguished guests, thank you for the opportunity to speak with you today. We are here in Brussels on January 28 to celebrate an important occasion.

Thirty years ago Convention 108 was opened for signature. Today 43 member states of the Council of Europe have ratified the Convention, which remains open for signature to countries all around the world.

Convention 108 is a remarkable document that recognizes the value of innovation and the importance of fundamental freedoms. The Convention sets out a framework that allocates rights and responsibilities in the collection and use of personal data in the context of modern technology. The Convention builds on Article 12 of the Universal Declaration of Human Rights which sets out the simple premise that privacy is a fundamental human right and that it is entitled to protection in law. The Convention also makes clear that privacy rights are protected in law through democratic institutions.

And for all of these reasons, January 28 has taken hold as key date in our modern calendar.

The date has led to public education campaigns about the right to privacy around the world. In the United States, many organizations have organized events. Even those who may not know fully understand the

history of the day have recognized its importance. The United States Senate has just passed a resolution recognizing Data Privacy Day.

Over the last several years, the voice of civil society has also grown louder. Organizations such as Privacy International, BEUC, the European Digital Rights Initiative, EPIC, the Center for Digital Democracy, and others have urged lawmakers in Brussels and Washington to address this fundamental concern of citizens in the Information Age.

On Facebook we have organized campaigns to show support for January 28. And more than 100 civil society organization and privacy experts signed the Madrid Declaration of 2009. The Madrid Privacy Declaration reaffirms support for international instruments for privacy protection, such as Convention 108, identifies new challenges, and call for concrete actions.

The Madrid Declaration specifically urges those countries that have not yet ratified Convention 108 together with the Protocol of 2001 to do so as expeditiously as possible.

The Madrid Declaration also calls for a moratorium on the development of new systems of mass surveillance, such as airport body scanners, biometric identifiers, and RFID tags, subject to a “full and transparent evaluation by independent authorities” and democratic debate.

Even as discussion about new legal instruments moves forward, it is critical that we not lose sight of the daily challenges that new technologies, new business practices, and new government initiatives pose.

And the Madrid Declaration urges that the discussion an international framework for privacy protection take place, “with the full participation of civil society, based on the rule of law, respect for fundamental human rights and democratic debate.”

The new undertaking by the European Commission to develop a comprehensive approach on personal data protection in the European

Union, leading to legislative proposals in the next year, is consistent with the goal.

But there is also work to be done outside of the European Union in January 28.

Last year on this day, EPIC urged Secretary of State Hilary Clinton to begin the process of US ratification of the Convention 108. That statement, which was endorsed by leading technical experts and legal scholars, noted that the Secretary's speech on Internet Freedom reflected many of the same concerns that "animated the framers of the Council of Europe Convention who saw the promise of new technology but also recognized the risk to fundamental human rights."

We said that the protection of privacy is a fundamental human right, and we warned that in the 21<sup>st</sup> century, it may become one of the most critical human rights of all.

Some in the US may object to support for a Council of Europe Convention. But it was the United States and Eleanor Roosevelt who helped craft the Universal Declaration of Human Rights on which the Convention is based. And it is the United States that has ratified the Council of Europe Convention on Cybercrime and urged its allies to do so as well.

And it would be appropriate to update the principles contained in the Privacy Convention:

- First, data minimization should be a key goal and the burden must always fall on the data collector to ensure the need, purpose, and safeguards for the data that it collects. Information that cannot be protected should not be collected.
- Second, privacy by Design and Privacy Enhancing Techniques should become benchmarks for evaluating the design of new information technologies. The failure to incorporate these basic design techniques should require a warning notice to the user that the service may pose a risk.

- Third, we must make transparency meaningful. It is not sufficient to be given an ambiguous notice. It must be possible to examine and assess the actual data collection and processing practices. We do not hide the gas pedal or the brake pedal from the driver of a car. We must not hide the data collection practices or the decision making process from the subject of the data.
- Fourth, we must begin to address the growing concentration of data in the private sector. Data collection does not occur in the abstract. As a small number of firms intensify data collection, the need to assess associated risks to political freedom, innovation, and unfettered competition increase.

Over the long term, we must move toward a global framework for privacy for a global world. Convention 108 provides the basis for this framework

And so we have an opportunity, on this important day, to carry forward a belief that remains true in all countries around the world – that the progress of technology and the protection of fundamental human rights can march forward together.

This was the insight of the Council of Europe thirty ago. It is the commitment of the 43 countries that have ratified the International Privacy Convention. It is the challenge to those countries that have still to ratify the Convention.