Need for updating

A more general but nonetheless important point that rings true throughout the EU is that unencrypted email servers are definitely no longer state-of-the-art and should be updated. Companies that were approached by the DPA should act as fast as possible in order to avoid administrative fines. But also those companies that have not been contacted by the DPA should take action, including the implementation of Perfect Forward Secrecy. It may be better to plan such implementations in advance, instead of being forced to update the systems in the very short term and under the pressure of possible fines.

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ICO publishes draft privacy seal scheme

Sue Gold

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Who: Information Commissioners Office (ICO)

Where: United Kingdom

When: 3 September 2014

Law stated as at: 9 September 2014

Third-party privacy seals

What happened

The ICO has published draft framework criteria for a scheme whereby third-party privacy seal schemes can obtain the ICO's official endorsement. It has issued a consultation document for comments by 3 October 2014.

The ICO is planning to endorse at least one scheme operated by an independent third party in the United Kingdom for a minimum of 3 years. The consultation invites comments on the framework criteria against which proposals for schemes will be assessed. The ICO will then invite proposals later this year, with a view to selection in early 2015 and launch in 2016. In order to be selected, the scheme operator will need to be accredited by the UK Accreditation Service (UKAS).

Background

The world has changed and both consumers and regulators want to be able to quickly identify where there are good privacy standards — accountability and transparency are key. Although accreditation schemes, particularly for website privacy policies, have been very popular in the United States, their adoption and use in Europe has been slow.

ICO proponent of private schemes

This may be changing and the ICO is a strong proponent of the adoption of 'privacy seals' schemes to indicate that a business operates and

maintains ‘good privacy standards’. The consultation document is in three sections, looking first at how the ICO will endorse the scheme and work with the operator. The remaining sections look at how a seal scheme will fulfil the underpinning principles and, finally, at some of the scheme requirements using the guidelines.

Conditions of the ICO’s Endorsement

Key points to note:

- UKAS accreditation is a condition for ICO endorsement and the ICO will offer UKAS technical support and advice.
- ICO will monitor progress of the scheme and this will be separate from UKAS review.
- ICO will recover costs from the scheme operator.
- The scheme operator will be responsible for day-to-day operation, including liabilities and indemnities and dealing with complaints and queries that must be conveyed to the ICO.
- ICO will work with the operator on branding of the seal, launch, promotion and working with industry and consumer groups.

Underpinning principles and scheme requirements

To be seriously considered for ICO endorsement, a seal scheme must:

- be new, with privacy as its focus;
- be consumer-facing and may focus on a specific sector, product or service or have cross-sector scope;
- require members to ‘self-report serious or recurring data breaches’ to the ICO;
- monitor technology and privacy developments and update requirements;
- provide clear incentives for scheme members, although no guidance is provided as to what sort of incentives are envisaged;
- be able to complement applicants’ existing data protection policies or procedures and not require significant changes to organizations’ other existing policies;
- have monitoring, audit or review processes in place on a regular basis; and
- provide clear guidelines on when a certification may be revoked.

Consultation

The ICO has asked for feedback on its proposals and comments on the ICO’s role in relation to endorsement and revocation of seal schemes. It has also asked for comments on the advantages and disadvantages of an ICO endorsement scheme and the underpinning principles.

Why this matters

Need for clarity

As the ability to demonstrate compliance becomes more important, privacy seals are likely to be seen as a way of providing evidence of compliance to both consumers and regulators. For such schemes to work, it is imperative that there is clarity on exactly what the seal signifies and effective review of ongoing compliance.

Need for audit and review

Although in principle the use of seals seems sensible, the challenge will be to work out the detail and also ensure that there is clarity with

consumers as to the level of endorsement and support from the ICO. Schemes will need to have triggers for *ad hoc* audits and have an ‘appropriate level’ of regular audit and review as part of this practice. Determining what that ‘appropriate level’ will be is the challenge, and it is important that industry and consumers participate in this debate with the ICO and provide feedback to ensure that any ICO endorsement of a seal scheme really does have value.

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Big VAT changes for B2C supply of e-services in the EU

Mark Brailsford

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doi:10.1057/ddmp.2014.73

Who: HMRC (and equivalent bodies in other European Union states)

Where: EU-wide

When: 1 January 2015

Change to place of supply rule

What happened

As of 1 January 2015, changes to the VAT ‘place of supply’ rules will take effect across the EU for certain digital services, such as broadcasting, telecommunication and e-services, for example, music downloads, apps and video on demand. Currently, sales to consumers (or, in VAT terms, non-business customers) are subject to VAT where the selling business is based. The new rules will change the position so that all such supplies are subject to VAT where the customer is based. This means that businesses will be required to identify where each of their consumer customers is based and then account for VAT at the rates applicable for each such EU country. (They will need to do this either by registering for VAT in each such country or by using a new concept of a ‘mini one-stop shop’, or a ‘MOSS’ in the jargon, to register for VAT in one relevant country and account for all VAT payable across the EU through this one registration.)

Impact on pricing in ads

Why this matters

Businesses will need to have systems in place to identify the location of their customers and enable them to charge the correct rate of VAT. This will be harder in some cases than in others. From an advertising and marketing perspective, the impact will be on the advertising of pricing. In a scenario where offers of e-services are made cross border and there is