

UK empirical evidence on data protection compliance: Consent for data processing

Stavroula Karapapa & Indranath Gupta

Abstract

While the issue of data protection compliance in the online environment has attracted much scholarly attention, there is little empirical evidence as to whether commercial websites comply with data protection law. With expansion of e-commerce, social networking and e-governance, submission of personal data to websites has become an essential prerequisite for taking advantage of any online service. Whereas possession and processing of such data by online service providers represent a key asset for business models in the web 2.0, they also create an issue of major social concern since they might implicate consumer privacy.

In light of the conditions laid down in the Privacy and Electronic Communications (EC Directive) Regulations 2003, this paper outlines the results of an empirical survey examining the data compliance of 200 websites registered with “.co.uk” domain. The data-protection conditions fall into three broad categories, namely informed consent, proportionality and legitimate purpose; it is only under these conditions that personal data may be processed. For the purposes of the empirical survey, we have primarily translated the legal requirement concerning informed consent into variable to test the compliance level of UK websites.

The survey determines the way by which websites collect personal information from data subjects. In particular, it explores the types of data collected and the extent to which such data is collected. The survey also assesses whether consent has been legitimately obtained. This assessment ascertains whether the consent expressly includes marketing purposes for receiving e-mail advertisements, or if it is some general form of consent towards non-explicit purposes. In addition, the survey looks at the way by which consent is obtained from the data subjects. Even though there are many ways to obtain consent in online interactions, for instance by asking the user to click in a box during registration, such consent is deemed to be valid only if users are given the opportunity to freely “opt in” for receiving commercial communications and for permitting transfer of data to third parties.

The survey shows that websites are not always compliant with data protection law. Websites seldom met the explicit consent requirement in relation to data processing. Also the method of obtaining consent is questionable on the ground of legitimacy. The empirical survey forms the basis of future research on data compliance.