

Standards in the Cloud:  
A transatlantic mindshare

# U.S. Privacy Bill of Rights Status and Substance

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- April 2010, DOC announced a public review of U.S. privacy policy and issued a NOI seeking public comment on ways to strengthen policy.
- Broad participation by over 70 entities.
- October 27, 2010 Assistant Secretary Strickling addressed the ICDPPC and outlined privacy principles and sought their views.
- December 2010, DOC issued Green Paper with tentative conclusions and sought further comment.

- January 28, 2011 over 100 written submissions on Green Paper were received by DOC.
- March 16, 2011 Cameron Kerry, DOC GC, announced Obama Administration's decision to seek strong Internet consumer privacy legislation including a consumer bill of rights.
- April 2011-September 2011 interagency group (EOP, DOC, DOJ, USTR, State, and FTC ) refined and further articulated the Administration's privacy principles.
- Administration's principles were socialized with EU officials at OECD and other high level contacts.
- Upon approval, the White Paper will become the official administration position and the basis for legislation.

# Substance

- Privacy is currently protected in the U.S through:
  - Constitutional Principles (First and Fourth Amend.)
  - Extensive State consumer protection laws and robust breach notification laws (credit and debt practices, data breach and disposal laws)
  - Sector specific Federal data privacy laws (HIPPA, GLBA) and FOIA
  - FTC enforcement activities
    - Enforce voluntary privacy notices
  - Adaptable common law rights

- The Administration recognizes that it is essential (1) to strengthen and harmonize consumer data protection for Internet activities and (2) to promote growth and innovation in the Internet by:
  - Sustaining consumer trust
  - Clarifying how personal information is collected and used
  - Improving the effectiveness of online notifications
  - Minimizing the harm from data breaches

- While the text of the White Paper will not be released until completion of the interagency process, it is clear that senior administration officials are supporting **a legislative baseline of consumer rights that is:**
  - Applicable to commercial transactions generally
  - Flexible
  - Enforceable by the FTC
- Existing sector specific privacy rules (HIPPA, GLBA) will be retained.

- The baseline protections are based on the FIPPs first articulated in 1973 which:
  - Formed the basis of the 1980 OECD Guidelines and the APEC privacy principles
  - Influenced the provisions of Directive 95/46/EC
- However the consumer rights will be articulated in a somewhat different form in order to:
  - Provide a technologically neutral regime
  - Significantly expand individual control over personal information
  - Recognize that context is important in determining use
  - Enhance the effectiveness of notification provisions
  - Ensure accountability

- In addition to enforceable baseline protections the Administration is recommending the **development of enforceable codes of conduct through a multi-stakeholder process.**
  - Government participates but does not prescribe
  - All stakeholders can participate
  - The process should be nimble, flexible and responsive to new technologies
  - Such processes have worked well in the development of the Internet
- Finally the Administration is recommending that the enforcement authority of the FTC be enhanced and supports the adoption of robust Federal data security legislation.

- The Administration's recommendations are wholly consistent with the principles articulated in the Communiqué of the OECD, HLM on 28-29 June 2011 which:
  - Encouraged multi-stakeholder cooperation
  - Fostered the development of voluntary codes
  - Sought to ensure transparency and accountability
  - Encouraged individual control
  - Promoted the free flow of information
  - APEC ECSG adopted documents based on similar principles 2 weeks ago

# Conclusion

- The recommended legislation will significantly enhance consumer protection in the U.S. and should help facilitate the interoperability of the EU and the U.S. privacy policies which are already based on similar values and shared goals.