

## **Internet Governance Forum (IGF) 2010, Vilnius, Lithuania**

**Workshop Number:** O.F5

**Workshop Title:** ICC Open forum on data protection and privacy

**Report by:** Elizabeth Thomas-Raynaud

### **Workshop description and list of panellists:**

- 1.Introduction: Andrius Iskauskas, Chair ICC Lithuania's EBITT Commission, Member of the Board, ICC Lithuania
- 2.Moderator: Ellen Blackler, Executive Director, Public Policy, AT&T
- 3.Christopher Kuner, Partner, Hunton and Williams, Chair, ICC Task Force on Privacy and Protection of Personal Data
4. Joseph Alhadeff, VP for Global Public Policy and Chief Privacy Officer, Oracle Corporation; Vice Chair, ICC EBITT Commission
5. Zahid Jamil, Barrister-at-law, Jamil and Jamil, Chair ICC Pakistan's EBITT Committee and Member of the Executive Board, ICC Pakistan

### **The actors involved in the field; various initiatives that people can connect with, and contacts for further information:**

<http://www.iccwbo.org/policy/ebitt/id20384/index.html>

### **A brief substantive summary and the main issues that were identified:**

Andrius Iskauskas, Chair ICC Lithuania's EBITT Commission, Member of the Board, ICC Lithuania, opened the Forum and welcomed the participants. He spoke about ICC's work developing global data protection and privacy policy and practice tools and their utility from a Lithuanian perspective.

Ellen Blackler, the moderator, introduced the International Chamber of Commerce (ICC) and the panellists setting the stage on how ICC's global, cross-sectoral activities assist policymakers and business from around the world to better safeguard personal data of users by streamlining processes and facilitating compliance.

**Christopher Kuner, Partner, Hunton and Williams, Chair, ICC Task Force on Privacy and Protection of Personal Data** introduced the work of this international body of business experts.

He noted that data protection is not a niche issue but rather a critical business concern that ICC has been actively addressing for over 30 years. Through the task force which brings together global experts from companies around the world ICC develops policy guidance for regulators and practical tools to help companies best streamline efforts while ensuring appropriate safeguards of personal data. He mentioned that today there are 60 countries with some form of regulation on transborder data flows so the complexity of the issue is increasing not the contrary. Mr Kuner stressed that data protection is recognized as an important enabler for e-commerce so business works together through the task force to ensure the appropriate protections are in place and sufficiently streamlined to improve compliance allowing business to thrive and grow while protecting personal data of individuals.

Mr Kuner highlighted some of the task force's successful activities including the proposal of a set of contract clauses for EU data transfers to third party countries and their approval by the data protection authority working group and then the European Commission. Similar efforts were made to streamline the application process for binding corporate rules that resulted in an EU adopted version of ICC's proposed checklist and allowed companies to use the same template for multiple countries within Europe. He mentioned work identifying conflicts in law with data protection requirements, as in the case of the BASEL II regulations for financial institutions. He noted the task force also follows and inputs into policy developments through intergovernmental activities such as Council of Europe, OECD and APEC.

**Joseph Alhadeff, VP for Global Public Policy and Chief Privacy Officer, Oracle Corporation; Vice Chair, ICC EBITT Commission** described the state of privacy as one in flux. He stressed the importance of business coordination to advise drafters of the many regulatory reviews or initiatives to avoid unintended consequences, contradictory laws or overly burdensome procedures unable to improve outcomes.

Initiatives noted include the EU Directive under review, Council of Europe reviewing Convention 108, APEC advancing its work on cross border data transfers and the US FTC exploring new policy options. He stressed that business has to be part of the dialogue and that it can not only be seen as compliance issue but rather an enabler and differentiator for companies in earning trust and loyalty of their consumers

Mr Alhadeff presented the ICC Privacy toolkit and outlined the contents and how it offers business and regulators guidance in understanding privacy and the different elements in ensuring appropriate mechanisms and enforcement. He noted that there is significant potential for administrative challenges and overly burdensome approaches to fall short of

their aims. While well-intended, some measures are not as productive in delivering real outcomes as they could be.

He described the move to enhance cooperation in the international community to move towards more harmonized approaches and accountability. Given the global nature of the Internet and the rise of ICT devices and services such as RFID, cloud computing, this international view to data protection is essential and must be considered in national application of regulation.

He shared his view that principles were in place to cover new considerations but that work needed to be done in better understanding the application of these. Using the example of notice and while the need to apply remains for all technologies the manifestation of that application for technologies such as RFID tags needs to be considered. ICC has an important role in bringing together business views on these topics and assisting policymakers in identifying these and considering how to benefit from technological change while ensuring the protection and appropriate use of personal data.

**Zahid Jamil, Barrister-at-law, Jamil and Jamil, Chair ICC Pakistan's EBITT Committee** and Member of the Executive Board, ICC Pakistan described his experience working with the ICC global commission to inform and advise his government to help them avoid unintended errors in taking data protection law from one country and 70% of its outsourcing market. Mr Jamil's participation in the ICC global discussions on data protection allowed him to consult with EU and US experts to identify alternative measures to allow Pakistan to develop a law that ensured safeguards to meet the level required for EU data processing through model contracts without impairing their ability to retain business with other countries. Both the ability to consult with peers from other countries and the ability for the IT minister to speak to international experts allowed for rapid improvement of the proposals and adoption of legislation best suited to Pakistan's circumstance.

### **Conclusions and further comments:**

This is a crucial time for privacy with many intergovernmental bodies are reviewing existing frameworks that were drafted before the mass expansion of Internet: EU directive, OECD guidelines and Council of Europe.

Stakeholders' collective efforts are needed to ensure this evaluation of current regulation considers the ubiquitous nature of global transfers and applies principles in a way that can increase confidence in e-commerce, address the challenges yet avoid adding complexity or conflicting laws that result in burdensome administration unable to deliver outcomes desired.

Participants discussed the increasing interest, particularly in the developing world of mobile telephony issues including marketing and location- based services. ICC noted it would be looking at these policy questions and aiming to work more with developing countries to identify ways to put data protection measures in place that can energize the economic potential of Internet and ICT services.

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