

# DIGITAL INTEROPERABILITY SUBMISSION TO THE CONSULTATION ON THE COMMISSION'S COMPREHENSIVE APPROACH ON PERSONAL DATA PROTECTION IN THE EUROPEAN UNION

25 January 2011

The Digital Interoperability Forum (DIF) is pleased to have the opportunity to comment on the Commission's consultation on data protection. DIF members<sup>1</sup> represent all parts of the broadcasting, communications and multimedia paid-for content value chain, including transmission, hardware, software, middleware, platform operation and content and data provision. DIF members have a strong interest in the continuing success of digital TV and information society services in Europe. Inherent to this success is consumer confidence and trust in the services offered and the equipment used.

A number of DIF members are responding to this consultation individually or through other trade associations, such as the ACT and Cable Europe. Accordingly DIF confines its comments to the matter of "privacy by design". DIF would be pleased to discuss this submission in more detail with the Commission.

## **Privacy by Design**

The delivery of paid-for content involves the use of complex transmission and distribution systems (satellite, cable, terrestrial, IPTV, mobile, internet, etc.) to make content and data available via a variety of devices, including set top boxes, mobile phones, games consoles, tablets, etc. In order to deliver content and data which the consumer is entitled to receive (and for which the consumer normally has to pay) conditional access and digital rights management systems are integrated into the distribution system and devices. A consumer's entitlements include also personal data, such as his address, to ensure that content is received only by the subscribing household.

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<sup>1</sup> The Digital Interoperability Forum (DIF) membership includes *BSkyB, Deutsche Telekom, Groupe Canal+, Irdeto, Liberty Global, Microsoft, Nagravision, NDS, Pace, Sky Deutschland, Qualcomm, Sky Italia, Viaccess, and ZetaCast.*

In addition to data concerning subscriptions many DIF members offer interactive services (based on two-way communications) and services such as behavioural advertising. Central to such services is the use of personal data.

DIF members take data protection very seriously. The nature of the services provided means that data protection considerations are integral to the product and delivery system design processes.

Nonetheless, DIF welcomes the Commission's interest in enhancing the privacy by design concept. At this stage, however, DIF would encourage the Commission to explore further the use of self-regulatory mechanisms for this purpose and defer any "concrete implementation" of the concept. DIF's recommendation reflects the fact that, in the paid-for content delivery chain alone, the systems and equipment are highly complex. Accordingly, DIF considers that any formal or legislative measure would suffer from difficulties of definition and interpretation. These difficulties would only be magnified in many other sectors. In other words, privacy by design is not a concept which lends itself readily to legislation which would provide the necessary certainty to businesses and their data controllers.

DIF would be interested to explore with the Commission the feasibility of developing a self-regulatory initiative, possibly based on best practice or guidelines for privacy by design in its sector. In this context DG Justice may wish to be aware that, with the support of DG Energy, DIF led the initiative which developed the first self-regulatory instrument for energy efficiency<sup>2</sup> under the Eco-Design of Energy-Using Products Directive (Directive 2009/125/EC) DIF members used their influence in the sector to secure the support of non-DIF members and the Voluntary Agreement now has the support of 80% of the relevant market. DIF considers that such an approach may be helpful to enhancing "privacy by design".

A self-regulatory approach may include also certification marks, privacy seals, labels, etc. However, as with energy efficiency labelling schemes, DIF notes that consumers purchase paid-for content services and equipment on the basis of the content and functionality which is available, not on the basis of the characteristics of the products. Hence, at this stage DIF questions whether such schemes are useful in its sector.

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<sup>2</sup> <http://www.difgroup.eu/key-topics/greening-of-ict>

DIF members have also observed that there are differences in the implementation of existing data protection legislation across the Member States (and different legislation applies, of course, in non-EU countries). Such differences would mean that, if privacy by design were to be implemented “concretely”, barriers to the flow of goods and services could exist. DIF suggests, therefore, that the potential need to harmonise implementation of existing legislation should be considered as a first step.