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# INTRODUCTION

Organisation for Economic Co-Operation and  
Development

The Thirtieth Anniversary of the OECD Guidelines on  
Privacy

Introduction by M.D. Kirby

The Hon. Michael Kirby AC CMG

# ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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### THE THIRTIETH ANNIVERSARY OF THE OECD GUIDELINES ON PRIVACY

The Hon. Michael Kirby AC CMG  
Chairman of the OECD Expert Group on transborder data flows and the protection of privacy (1978-80). Australia.

One does not normally think of the Organisation for Economic Co-Operation and Development (OECD) as a major player in the global elaboration of human rights. Yet, between 1978-1980, the Organisation established and supported an expert group, tasked with the function of preparing international guidelines on the protection of privacy. That value is recognised in many international statements of human rights, notably in the *Universal Declaration of Human Rights* (Art.12) and the *International Covenant on Civil and Political Rights* (Art.17.1).

I served as the chairman of the expert group. It included many outstanding personalities. It had magnificent support from the Organisation's secretariat, led by Mr. Hanspeter Gassmann. He, in turn, secured the participation of Professor Peter Seipel of Sweden, one of the first experts in law and information technology. The group produced the Privacy Guidelines in little more than two years. They were adopted by the Council of the OECD. It recommended their implementation to member countries. The Guidelines have proved influential in promoting legislative change, governmental policies, judicial opinions, commentary, community awareness and civil society support. In fact, the Guidelines

have been one of the most practical and influential statements of international principles in the field of human rights in the past three decades.

It was therefore fitting, in March 2010, that the OECD Working Party on Information, Security and Privacy (WISP) should assemble to reflect on this achievement and the lessons it provided for contemporary concerns. That session was followed by a roundtable, convened by the Committee for Information, Computer and Communications Policy (ICCP). At these events, Mr. Gassmann, Mr. Louis Joinet (who had represented France on the Expert Group) and I offered some memories of the work of the expert group; suggested some of the main achievements of the Guidelines; and predicted a number of future developments. In the field of information policy, the technology is such that no international expression of principles can be immune from the forces of change.

The OECD embarked on its Privacy Guidelines of 1978, in part, because of a gap that had opened up in the proper protection of personal data (both automated and conventional) and, in part, because of anxiety that differing national legal regulations, superimposed on interconnecting communications technology, would produce serious inefficiencies and economic costs, as well as harm to the value of personal privacy. In this way, the important human right that was at stake was shown to have significant economic implications, deserving the attention of the OECD.

Although there were critical differences between member countries over the machinery of privacy protection, there was surprisingly broad consensus concerning the fundamental principles in play. In developing them, the OECD was able to draw, for its inter-continental mission, upon

work already undertaken in the Nordic Council, the Council of Europe as well as in United Kingdom and United States institutions.

By reflecting the influence of the ideas already propounded, the Guidelines proved practical and effective. Indeed, they were an immediate success. Member countries could agree to leave the machinery of enforcement to follow national traditions. But agreement on the broad principles helped to reduce the inefficiencies of completely disparate responses. A key to the success of the Guidelines was the way in which they built on their predecessors; added specific value with several new ideas; allowed for flexible implementation; and stimulated the concern about the operation of ethical principles in a technology of astonishing potential.

To some extent, the advances in technology have been such as to necessitate some reconsideration of the original wording of the Guidelines. Yet, on the whole, they have survived very well the passage of the past thirty years despite the extraordinary technological advances. In truth, the current age must address even more complex technological and social developments than the expert group faced in its meetings in the 1970s. The creation of new systems of mass surveillance; the development of biometric identifiers and imbedded RFID tags; the advances in privacy enhancing technology (PET); the introduction of intrusive airport body scanning; the growth of cyber crime and spam have all presented new challenges to keep the OECD busy in this field.

The OECD can draw satisfaction from its contribution to the protection of individual privacy (data protection and data security) through its Guidelines. The great importance of information technology for the

economies and people of OECD member states, and for the world economy, means that these issues will remain on the agenda for the foreseeable future. By its work in this field, the OECD proved itself at once a world leader and a notable contributor.

Since 1980, the OECD has embraced other challenges of equal importance to good governance: institutional integrity and anti-corruption measures as well as provisions to uphold democracy and electoral standards; the *Anti-Bribery Convention*; responses to tax havens; and measures for effective environmental protection. In this way, the OECD project on the Privacy Guidelines may have assisted this uniquely efficient international body to realise (perhaps to its own astonishment) that economics and statistics, whilst very important, are not an end in themselves. They are significant as they contribute to good government; to a vibrant and just societies; and to a world that safeguards and advances human rights and human happiness.

As a story of institutional growth and evolution, the OECD Privacy Guidelines therefore have a significance that extends beyond their specific focus on information, computer and communications policy. Their ultimate focus is the wellbeing of all people living in OECD member countries and beyond. And that is as it should be.

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