



C.I.R.S.F.I.D
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Research Centre of History of Law,
Philosophy and Sociology of Law,
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Personal Data Protection and On-line Privacy

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What is Privacy

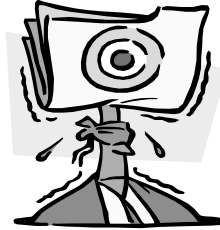
A right of the personality recognised
and protected by art. 2 of the
Constitution

- Absolute
- Not disposable
- Imprescriptible



Personal Data Protection?

to guarantee the
fundamental **rights** and
freedoms



to prevent **discrimination**
and **unsecurity**

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Legal Sources for Privacy

Directive 1995/46/CE - the main source for Data
Protection in the E.U.:

- definitions
- principles
- rights

*Implemented in Italy by the law of December 31st 1996 no. 675
a.k.a. «Legge sulla Privacy».*

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Legal Sources for Privacy

Directive 2002/58/CE - Directive on privacy and electronic communications

to translate the principles set out in Directive 95/46/CE into specific rules for the telecommunications sector

Replaces Directive 97/66/CE, adopted in Italy by legislative decree no. 171/1998

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Applicability

Directives 95/46/CE and 2002/58/CE
always protect E.U. Citizens' on-line privacy

Directives are applicable when:

- (a) the controller is established on the territory of the Member State;
- (b) the controller's national law applies by virtue of international public law;
- (c) personal data are processed using equipments situated on the territory of a Member State, unless such equipment is used only for purposes of transit through the territory of the Community;

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Definitions

PERSONAL DATA → information relating to an identified or identifiable **natural or legal** person (data subject)

PROCESSING → any operation or set of operations which is performed upon personal data, whether or not by automatic means

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Personal Data



E-mail addresses are personal data



IP addresses are personal data



Internet traces

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Principles

Personal Data must be:

- processed fairly and lawfully
- collected for specified and explicit purposes;
- adequate, relevant, not excessive;
- accurate and updated;
- kept for no longer than is necessary;
- processed confidentially
- protected against loss, alteration, disclosure or access

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Rights

Every data subject has

- the right of access and rectification
- the right of erasure or blocking
- the right of opposition

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Consent

Personal Data can be processed only if the data subject has unambiguously given his

CONSENT



Any freely given, specific and informed indication of his wishes, by which the data subject signifies his agreement to personal data relating to him being processed.

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Informed Consent?

The controller must communicate to the data holder:

- his (true) identity and (e-) address
- the purposes of the processing
- how to exercise the right of access and rectification
- third parties recipients

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On-line Data Collection

The DPWG recommends to:

- give a short informative + privacy policy
- warn users of automatic data collection procedures (cookies)
- use frames, pop-up windows, check boxes, buttons
- use Privacy Enhancing Technologies

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Forbidden

- unauthorised cookies
- hidden links
- spywares, ET softwares and trojans
- spamming



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Spamming (UCC)

Automatic commercial communications (by e-mail, sms, fax, phone) are forbidden unless the recipient gives his consent:

OPT-IN

OPT-OUT

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OPT-OUT

Preliminary consent is not necessary

- When e-mail details are obtained in the context of the sale of a good or a service.
- The opportunity to object must be given both when data are collected and on the occasion of each message

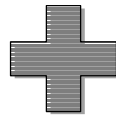
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Liability

- art. 2050 C.C. tortious liability



- contractual liability (?)

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The End

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