FEDERATION OF EUROPEAN DIRECTAND INTERACTIVE MARKETING

PUBLIC AFFAIRS & SELF-REGULATION 16 September 2011

To: Ms. Marie-Helene Boulanger, Head of Unit
Mr. Jose Manuel De Frutos Gomez, Policy Officer
European Commission
DG Justice - Directorate C - Unit C3

Dear Ms. Boulanger,
Dear Mr. De Frutos Gomez,

As a follow-up to our previous letters, FEDMA would like now to share with the European Commission its views on the definition of personal data and the so called Right to Be Forgotten.

FEDMA is aware of the debate on the definition on personal data in the review of the 95/46 Directive and is worried about the possible consequences that redefining personal data could have on data subject's fundamental rights, such as the right to access one's data. A data controller has the obligation to give data subject access to his data. For doing so, the data controller needs sufficient identification to ensure that the data are accessed only by their own data subject. FEDMA believes that this isn't possible in situations where unidentifiable data (for the controller where the data subject ask for access,) would be regarded as personal data. That a third party outside the organisation of the controller could make the initial unidentifiable data, identifiable, doesn't mean that the initial controller of the unidentifiable data actually processes identifiable data. In cases where data are unidentifiable it is impossible for the controller to guarantee that the access is only given to the personal data of the right data subject and not of or to a third data subject.

For this reason, in order for a data subject to exercise his full right of access, correction and deletion while having his data efficiently protected, it is of importance that the definition of personal data sticks to identifiable data.

FEDMA understands the importance of a Right to be forgotten as a mean of control for a data subject over once data, in particular in the context of social networks, where data subject voluntarily upload personal data (comments, pictures, video...) and personal data redistributed through search engines etc.

However, an unconditional right to be forgotten would have harmful consequences for the data subject in particular in a direct marketing context. Under the 95/46 Directive, an organisation is required to maintain an in-house suppression file of data subjects who have indicated that they do not want to receive further direct marketing communication from that particular organisation.

If all the personal data about a data subject who has exercised such a right to be forgotten is completely deleted, there is a risk that the data subject may receive unsolicited marketing communication in the future if his/her name appears on a marketing list which the organisation has legitimately obtained from a third party, thus the data subject's choice not to be contacted would not be respected. Moreover, FEDMA believes that the contours of a "right to be forgotten" already exists through the principles laid out in the 95/46 Directive for data subject should have a right of access, rectification and deletion of their data, and for data controllers should not store personal data for longer than is necessary, and for the sole purposes specified at the moment of data collection.

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If the general belief is that data controllers are keeping personal data for longer than is necessary, then stronger enforcement and more guidance should be provided.

FEDMA members stress that an unqualified 'right to be forgotten' will put data controller in a position in which they can't put into effect a consumer's right to be forgotten from a marketing perspective.

Please do not hesitate to contact me in case you have any further questions or concerns.
Yours sincerely,

Dieter Weng
Chairman of FEDMA

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