

## Roundtable of G7 Data Protection and Privacy Authorities

### ***Promoting Enforcement Cooperation***

11 October 2024

In order to promote enforcement cooperation and shared knowledge and experience, the participants of the G7 Data Protection Authorities (DPAs) roundtable continue to discuss their enforcement practices and priorities.

### **Enforcement Practices and Philosophies**

The G7 DPAs aim to have maximum impact, often with limited resources, focusing on outcomes and not only outputs. The DPAs have a range of enforcement powers including conducting investigations, and in some cases issuing penalties and orders. Effective enforcement, whether done individually by each DPA or jointly, promotes deterrence, increases accountability, promotes compliance, and provides help to individuals. Cooperation assists in achieving these goals and engagement with regulatory partners at the bilateral and multilateral levels allows DPAs to leverage their resources and experiences to achieve greater outcomes more efficiently. Increased awareness and common understanding of the issues at the center of each authority's priorities fosters our strategic exchanges and collaboration as DPAs.

### **Enforcement Priorities**

G7 DPAs each set their own enforcement priorities. In discussing these priorities this past year, several prominent themes have been identified.

**Artificial Intelligence/Emerging Technologies:** Artificial intelligence and other emerging technologies are a priority for many of the G7 DPAs. The rapid advancement of these makes it a critical time to ensure that privacy is protected, and the G7 DPAs have reflected this attitude through enforcement actions.

- These include the Office of the Privacy Commissioner of Canada's (OPC) investigation of OpenAI to "ensure that AI is developed and

- deployed in a responsible, privacy-preserving manner.”<sup>1</sup> The OPC investigated Clearview AI as well and found that “Clearview AI did not obtain consent from the individuals whose information it scraped,”<sup>2</sup>
- The ICO in the United Kingdom has brought actions against Serco Leisure where they banned the company from using facial recognition software to monitor attendance of employees.<sup>3</sup>
  - The FTC in the United States alleged that Amazon Alexa violated the Children’s Online Privacy Protection Act (COPPA) by indefinitely retaining children’s voice recordings.<sup>4</sup> In the Riteaid and Everalbum cases, the FTC successfully ordered the deletion of algorithms that were either trained on illegally obtained data or were being used discriminatorily.<sup>5</sup> Further, Rite Aid was banned from using AI facial recognition surveillance systems for five years.
  - The PPC in Japan issued “Notices on the Use of Generative AI Services” which is a notice document in order to deal with data protection and privacy challenges posed by generative AI in 2023.<sup>6</sup> The PPC has also issued “The Use of Camera Systems with Facial Recognition Functions to Prevent Crime and Ensure Safety” which outlines some points such as the basic issues that businesses handling personal information need to understand when implementing a camera system with a facial recognition function, a situation in which the system to be used, points to bear in mind when installing the system, and desirable measures. The report also provides a summary of points to consider when introducing a camera system with facial recognition function to a large facility.<sup>7</sup>
  - In the private sector, the Garante has warned a cryptocurrency organization against collecting retinal scans that compromise freedom of consent and lack proper safeguards. Garante also launched an investigation into OpenAI to ensure that the data used to train the

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<sup>1</sup> [https://www.priv.gc.ca/en/opc-news/news-and-announcements/2023/an\\_230525-2/](https://www.priv.gc.ca/en/opc-news/news-and-announcements/2023/an_230525-2/)

<sup>2</sup> <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2021/pipeda-2021-001/>

<sup>3</sup> <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/02/ico-orders-serco-leisure-to-stop-using-facial-recognition-technology/>

<sup>4</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-doj-charge-amazon-violating-childrens-privacy-law-keeping-kids-alexa-voice-recordings-forever>

<sup>5</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>,  
<https://www.ftc.gov/news-events/news/press-releases/2021/01/california-company-settles-ftc-allegations-it-deceived-consumers-about-use-facial-recognition-photo>

<sup>6</sup> [https://www.ppc.go.jp/files/pdf/230602\\_alert\\_generative\\_AI\\_service.pdf](https://www.ppc.go.jp/files/pdf/230602_alert_generative_AI_service.pdf)

<sup>7</sup> [https://www.ppc.go.jp/files/pdf/kaoshikibetsu\\_camera\\_system.pdf](https://www.ppc.go.jp/files/pdf/kaoshikibetsu_camera_system.pdf)

algorithm was legally sourced, and are taking action on text-to-video generative AI.

- The use of smart cameras by public actors was a priority topic for investigation at the CNIL in 2023<sup>8</sup>. The use of such cameras during the Olympic and Paralympic games, together with other security aspects, like the introduction of QR codes for restricted areas and access authorizations, are part of the priority topics of the CNIL in 2024.<sup>9</sup>
- The EDPB launched a task force on ChatGPT<sup>10</sup> to allow its members to, among others, share information on-going enforcement and identify a list of issues on which a common approach is needed in the context of different enforcement actions at national level.
- The EDPS has published Orientations<sup>11</sup> on "generative artificial intelligence and personal data protection" to provide EU institutions, bodies, offices and agencies with practical advice and instructions on the processing of personal data when using generative AI systems. The EDPS has also provided recent guidance to EU agencies on the use of AI tools, including facial recognition, object detection and content ranking systems, to ensure that these systems operate in a fair manner (and enabling early detection of bias).

**Children's Privacy:** Children's Privacy is also a major concern and several G7 DPAs have made it a priority to protect children through enforcement actions.

- The FTC obtained a \$275 million penalty against videogame maker Epic Games and required them to implement stronger privacy default settings for both children and teenagers.<sup>12</sup> The FTC also brought an action against Edmodo, for using children's data for advertising.<sup>13</sup> The FTC's investigation of TikTok has led to a Department of Justice lawsuit

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<sup>8</sup> <https://www.cnil.fr/en/priority-topics-investigations-2023-smart-cameras-mobile-apps-bank-and-medical-records>

<sup>9</sup> <https://www.cnil.fr/en/cnil-investigations-2024-minors-data-olympic-games-right-access-and-digital-receipts>

<sup>10</sup> [https://www.edpb.europa.eu/system/files/2024-05/edpb\\_20240523\\_report\\_chatgpt\\_taskforce\\_en.pdf](https://www.edpb.europa.eu/system/files/2024-05/edpb_20240523_report_chatgpt_taskforce_en.pdf)

<sup>11</sup> [https://www.edps.europa.eu/data-protection/our-work/publications/guidelines/2024-06-03-first-edps-orientations-euis-using-generative-ai\\_en](https://www.edps.europa.eu/data-protection/our-work/publications/guidelines/2024-06-03-first-edps-orientations-euis-using-generative-ai_en)

<sup>12</sup> <https://www.ftc.gov/news-events/news/press-releases/2022/12/fortnite-video-game-maker-epic-games-pay-more-half-billion-dollars-over-ftc-allegations>

<sup>13</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-says-ed-tech-provider-edmodo-unlawfully-used-childrens-personal-information-advertising>

alleging violations of a children's privacy law and a 2019 consent order.<sup>14</sup>

- The OPC is investigating TikTok, including to determine "whether TikTok obtains valid consent for its collection, use, and disclosure of personal information" with a focus on children.<sup>15</sup>
- The ICO has also investigated TikTok and fined them £12.7 million for "failing to prevent children under 13 using its platform, potentially resulting in access to harmful and inappropriate content."<sup>16</sup>
- Data collected online from minors is one of the CNIL's priority topics of investigations for 2024: sites and applications most popular with children and teenagers will be checked to see whether age control mechanisms have been implemented, what security measures are in place and whether the principle of data minimization has been respected<sup>17</sup>.
- The EDPS, in collaboration with EU national data protection authorities, conducts ongoing reviews to assess the necessity and proportionality of processing personal data of minors under 15 by law enforcement.

**Geolocation Data:** Maintaining the privacy of an individual's geolocation data remains a prominent concern. Location data can reveal information that is being sought for marketing purposes and about customer patterns, but it can also reveal highly sensitive information about people by tracking their visits to such places as reproductive health clinics, houses of worship, and domestic violence shelters.

- The ICO issued an enforcement notice to Home Office "in relation to failures to properly assess the privacy intrusions caused by GPS monitoring of migrants."<sup>18</sup>
- The FTC sued Kochava for selling the geolocation data of millions of mobile devices and similarly banned InMarket and X-Mode from sharing and selling sensitive location data.<sup>19</sup>

<sup>14</sup> <https://www.ftc.gov/news-events/news/press-releases/2024/08/ftc-investigation-leads-lawsuit-against-tiktok-bytedance-flagrantly-violating-childrens-privacy-law>

<sup>15</sup> [https://www.priv.gc.ca/en/opc-news/news-and-announcements/2023/an\\_230223/](https://www.priv.gc.ca/en/opc-news/news-and-announcements/2023/an_230223/)

<sup>16</sup> <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/04/ico-fines-tiktok-127-million-for-misusing-children-s-data/>

<sup>17</sup> <https://www.cnil.fr/en/cnil-investigations-2024-minors-data-olympic-games-right-access-and-digital-receipts>

<sup>18</sup> <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/03/ico-finds-the-home-office-s-pilot-of-gps-electronic-monitoring-of-migrants-breached-uk-data-protection-law/>

<sup>19</sup> <https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>, <https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-will-ban-inmarket-selling-precise-consumer-location-data>,

- The CNIL imposed a fine on the company Cityscoot for having caused a disproportionate infringement on the privacy of its customers by geolocating them on an almost permanent basis<sup>20</sup>. Also, in the framework of CNIL's new simplified sanctioned procedure, the issue of geolocation of employee vehicles was raised in particular.<sup>21</sup>
- The OPC investigated the operator of the Tim Hortons app, associated with a large-scale coffee and fast food chain in Canada, and found that it collected vast amounts of granular geolocation data of app users without their valid consent and without an appropriate purpose.<sup>22</sup>

**Health Privacy:** Health privacy also remains a priority.

- In the US, the FTC banned Betterhelp from sharing data with Facebook for advertising purposes.<sup>23</sup> The FTC likewise required GoodRx to stop sharing data with third parties for advertising purpose and required both companies to pay fines.<sup>24</sup>
- Germany's BfDI<sup>25</sup> has taken steps to ensure that health insurance companies provide GDPR compliant electronic patient records (ePA). After warning several health insurance companies that providing ePAs solely in accordance with German law violates the GDPR, the BfDI ordered these companies to update their procedures.<sup>26</sup>
- The CNIL fined Doctissimo because it failed to comply with obligations under the GDPR, in particular obtaining consent of individuals to the collection and use of their health data<sup>27</sup>. Also, the security of health data was a priority topic for investigation at the CNIL in 2020 and 2021

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<https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-order-prohibits-data-broker-x-mode-social-outlogic-selling-sensitive-location-data>

<sup>20</sup> <https://www.cnil.fr/fr/geolocalisation-de-scooters-de-location-sanction-de-125-000-euros-lencontre-de-cityscoot>

<sup>21</sup> <https://www.cnil.fr/en/cnil-issues-ten-new-sanctions-under-its-simplified-procedure>

<sup>22</sup> <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2022/pipeda-2022-001/>

<sup>23</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-including-sensitive-mental-health-information-facebook>

<sup>24</sup> <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumers-sensitive-health-info-advertising>

<sup>25</sup> BfDI, being one of several Data Protection Supervisory Authorities in the federal system of Germany, has a specific scope of responsibilities mainly in the public sector, including health insurance organizations.

<sup>26</sup> <https://www.bfdi.bund.de/DE/Buerger/Inhalte/GesundheitSoziales/eHealth/elektronischePatientenakte.html?nn=418972>

<sup>27</sup> <https://www.cnil.fr/en/health-data-and-use-cookies-doctissimo-fined-eu380000>

and it still remains an issue. The CNIL performed checks on access to the computerized patient file in 2022 and 2023.<sup>28</sup>

- The PPC Japan issued the administrative guidance regarding data leakage concerning Health Privacy in 2022.<sup>29</sup>

**Security:** Data security is a continuing topic of concern for the G7 DPAs, and a potentially fruitful area of cooperation, given the similarity of legal frameworks in this area.

- The PPC has taken enforcement action against several data breaches.<sup>30</sup>
- The BfDI<sup>31</sup> has fined telecommunications providers for failing to take sufficient technical and organizational measures to prevent unauthorized access.<sup>32</sup>
- The FTC has imposed data minimization measures as a remedy in data security cases, recognizing this as a pillar of data security.<sup>33</sup>
- The ICO has taken a variety of enforcement actions against organizations that failed to take appropriate measures to prevent security incidents, including reprimands<sup>34</sup> and monetary penalty notices.<sup>35</sup>

**Online advertising:** the consent from the individuals in the context of online advertising, remains a topical issue.

- The CNIL sanctioned Criteo, specialized in behavioral retargeting, as a result of several infringements that were noticed during its investigations. In particular, there was a lack of evidence of the consent of individuals to the processing of their data, information and transparency, as well as respect for the rights of individuals.<sup>36</sup>
- The FTC has issued an Advance Notice of Proposed Rulemaking on a commercial surveillance rule, and has asked the public to weigh in on

<sup>28</sup> <https://www.cnil.fr/en/priority-topics-investigations-2023-smart-cameras-mobile-apps-bank-and-medical-records>

<sup>29</sup> [https://www.ppc.go.jp/files/pdf/221221\\_01\\_houdou.pdf](https://www.ppc.go.jp/files/pdf/221221_01_houdou.pdf)

<sup>30</sup> [https://www.ppc.go.jp/files/pdf/240328\\_houdou.pdf](https://www.ppc.go.jp/files/pdf/240328_houdou.pdf),  
[https://www.ppc.go.jp/files/pdf/240215\\_houdou.pdf](https://www.ppc.go.jp/files/pdf/240215_houdou.pdf)

<sup>31</sup> BfDI, being one of several Data Protection Supervisory Authorities in the federal system of Germany, has a specific scope of responsibilities mainly in the public sector but also some in the private sector, including postal and telecommunication service providers.

<sup>32</sup> [https://www.bfdi.bund.de/SharedDocs/Pressemitteilungen/EN/2019/30\\_BfDIverh%C3%A4ngtGeldbu%C3%9Fe1u1.html?nn=355282](https://www.bfdi.bund.de/SharedDocs/Pressemitteilungen/EN/2019/30_BfDIverh%C3%A4ngtGeldbu%C3%9Fe1u1.html?nn=355282),  
[https://www.bfdi.bund.de/SharedDocs/Pressemitteilungen/EN/2020/28\\_Urteil-1und1.html?nn=355282](https://www.bfdi.bund.de/SharedDocs/Pressemitteilungen/EN/2020/28_Urteil-1und1.html?nn=355282)

<sup>33</sup> <https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-finalizes-order-blackbaud-related-allegations-firms-security-failures-led-data-breach>

<sup>34</sup> <https://ico.org.uk/action-weve-taken/enforcement/london-borough-of-hackney-1/>

<sup>35</sup> <https://ico.org.uk/action-weve-taken/enforcement/interserve-group-limited/>

<sup>36</sup> <https://www.cnil.fr/en/personalised-advertising-criteo-fined-eur-40-million>

whether new rules are needed to protect people's privacy and information in the commercial surveillance economy.<sup>37</sup>

- The ICO wrote to 53 of the UK's top 100 websites, warning that they faced enforcement action if they did not make changes to advertising cookies to give people a fair choice over whether they consent to use of such technologies.<sup>38</sup>

## Enforcement Cooperation

**Multilateral:** G7 DPAs engage in numerous multilateral enforcement cooperation activities. The Global Privacy Assembly maintains a list of participants in the Global Cross Border Enforcement Cooperation Arrangement<sup>39</sup> and publishes an enforcement cooperation manual.<sup>40</sup> Several G7 Authorities also participate in the new Global CAPE (Cooperation Arrangement for Privacy Enforcement), an initiative of the Global CBPRs Forum.<sup>41</sup> Most recently, many participated in the Global Privacy Enforcement Network (GPEN) Sweep.<sup>42</sup> The European Data Protection Board, has created a Coordinated Enforcement Framework for streamlining enforcement and cooperation, and a Support Pool of Experts, enhancing cooperation by reinforcing and complementing the strengths of the individual DPAs.<sup>43</sup>

**Bilateral:** G7 DPAs also engage in bilateral enforcement cooperation. Several G7 DPAs have bilateral Memoranda of Understanding in place between them<sup>44</sup> and with other DPAs outside the G7 group.<sup>45</sup> G7 DPAs share mutual commitment to collaborate on enforcement cases of mutual interest to amplify the impact of their interventions. For instance, the OPC and ICO recently commenced a joint investigation into the 23andMe breach, that affected individuals in both jurisdictions.<sup>46</sup>

<sup>37</sup> <https://www.ftc.gov/legal-library/browse/federal-register-notice/commercial-surveillance-data-security-rulemaking>

<sup>38</sup> <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/01/ico-warns-organisations-to-proactively-make-advertising-cookies-compliant/>

<sup>39</sup> <https://globalprivacyassembly.org/participation-in-the-assembly/become-a-participating-pea-under-the-global-cross-border-enforcement-cooperation-arrangement/>

<sup>40</sup> <https://globalprivacyassembly.org/wp-content/uploads/2021/11/enforcement-cooperation-handbook-en-202111.pdf>

<sup>41</sup> <https://www.globalcbpr.org/wp-content/uploads/Global-CAPE-2023.pdf>

<sup>42</sup> <https://www.privacyenforcement.net/content/2024-gpen-sweep-deceptive-design-patterns>

<sup>43</sup> [https://www.edpb.europa.eu/system/files/2024-04/edpb\\_annual\\_report\\_2023\\_en.pdf](https://www.edpb.europa.eu/system/files/2024-04/edpb_annual_report_2023_en.pdf), at 30-31.

<sup>44</sup> E.g., [ICO-BfDI](#), [ICO-EDPS](#), [ICO-FTC](#), [ICO-OPC](#), [ICO-PPC](#), [OPC-BfDI](#)

<sup>45</sup> E.g., [ICO-OAIC Australia](#), [ICO-DPC Ireland](#), [FTC-AP Netherlands](#), [OPC-Abu Dhabi GM](#), [CNIL- CPPA California](#)

<sup>46</sup> <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/06/ico-to-investigate-23andme-data-breach-with-canadian-counterpart/>