

Cnil in brief



2011 Issue

A BIT OF HISTORY



Back in the seventies, the French Government announced a plan designed to identify each citizen with a specific number and, using that unique identifier, to interconnect all government records. This plan, known as SAFARI, led to great controversy in the public opinion.

It underlined the dangers inherent to certain uses of information technology and aroused fears that the entire French population would soon be recorded in files. This fear led the Government to set up a commission mandated to recommend concrete measures intended to guarantee that any developments in information technology would remain respectful of privacy, individual rights and public liberties.

After broad debates and public consultation, this “Commission on Information Technology and Liberties” recommended that an independent oversight authority be set up. Such was the purpose of the January 6, 1978 Act creating the “Commission Nationale de l’Informatique et des Libertés” (CNIL).

The **CNIL** commission is responsible for ensuring that information technology remains at the service of citizens, and does not jeopardize human identity or breach human rights, privacy or individual or public liberties. The Commission fulfils its duties in pursuance of the law of January 6, 1978 as amended on August 6, 2004.

PERSONAL DATA

What are personal data? According to the law, personal data means any information relating to an identified or identifiable individual; an identifiable person is anyone who can be identified directly or indirectly, in particular by reference to an identification number (e.g. social security number) or to one or more factors specific to their personal status (e.g. first and last names, date of birth, biometrics data, fingerprints, DNA...).

Focus

Personal data can be data not necessarily associated with the name of a person but that can easily be used to identify individuals and to learn their habits or tastes.

For instance: "The owner of vehicle 3636AB75 subscribes to such and such magazine" or "Social insurance beneficiary 1600530189196 sees the doctor more than once a month".

To define personal data, all means and resources available to the "data controller" should be considered to determine whether a person is identifiable.

Personal data are any anonymous data that can be cross-referenced to identify a specific individual (e.g. fingerprints, DNA, or information such as "the son of the doctor living at 11 Belleville St. in Montpellier is a bad student").

Information and communication technologies generate a growing amount of increasingly accurate data about us (e.g. credit card payment, calls made from a cell phone allowing the caller's location to be traced with a 400-meters accuracy, an internet connection).

Personal data have gained a significant commercial value. As a result they are increasingly sought after: files are bought and sold, commercial companies may be tempted to identify and compile into a single file the "good clients" or "bad clients" of each of their subsidiaries.

The "traces" left by ICT uses are increasingly easy to exploit, due to software improvements (e.g. internet search engine technology, or data mining software).



CNIL

ITS STATUS

■ Independent administrative authority

A multipartite college of 17 personalities

- 4 members of Parliament (2 congressmen, 2 senators)
- 6 judges from higher courts (2 Conseil d'Etat, 2 Cour de Cassation, 2 Cour des Comptes)
- 5 qualified personalities: 3 appointed by the Council of Ministers, the Speaker of the National Assembly (1) and the Speaker of the Senate (1)

12 of the 17 commissioners are elected or appointed by the assemblies or courts to which they belong.

- The CNIL elects its Chairman among its members. It does not report to any authority. Neither ministers, nor public authorities, nor private or public corporate officers may oppose the CNIL's action.

The CNIL Chairman has full liberty to hire the commission's staff.

The CNIL's budget is allocated from the State's budget.

CNIL employees are State civil servants.

Appeals may be filed against the CNIL's decisions before administrative courts.

ITS OPERATION

■ Plenary and Sanction Committee sessions

CNIL commissioners hold plenary and sanction committee sessions once a week, on an agenda prepared by its Chairman.

A large number of meetings is dedicated to reviewing bills and decrees submitted to the CNIL by the Government.

The CNIL also authorizes the implementation of sensitive records, such as those containing biometric data.

Since the adoption of the August 6, 2004 Act, the commission's Sanction Select Committee, comprising six members, may issue sanctions ranging from warnings to maximum fines of €300,000 against data controllers failing to comply with the law.



■ Activities apart from plenary sessions

To carry out their tasks and missions, CNIL commissioners are assisted by a staff of 148 budgeted FTEs, split into four major Divisions, each comprising several departments: Legal & International Affairs and Expert Appraisals; Users Relations and Inspections; Design, Innovation & Expertise; and lastly, Human Resources, Finance, IT & Logistics.

As part of its assignments, the CNIL replies to requests for advice addressed by data controllers, investigates complaints received from citizens, and performs in situ inspections.

It also carries out the verifications required under the right of indirect access to records linked to public safety and State security, and delivers extracts from the list of processing notifications ("Registry of Notifications") to anyone requesting it.

Beyond its activities of file inventory, inspection of records, replies to consulting requests and complaint investigation, the CNIL also devotes its efforts to delivering information to citizens regarding their rights and obligations.

In response to direct requests from numerous organizations or institutions to conduct training and awareness initiatives on the topic of the French data privacy act ("Loi Informatique et Libertés"), the CNIL participates in symposia, conferences and fairs to inform and keep informed. The Commission also gives talks in schools and educational establishments.

To date, the CNIL has organized 21 regional fora. Their purpose is to reach out at regular intervals to all public and/or private stakeholders impacted by data protection issues in a given French region, in particular corporate entities or decentralized State administrations.

In order to publicize its decisions or actions more widely, the CNIL leverages various communication tools: web site, monthly e-newsletter addressed to 32,931 subscribers, annual reports, press releases, along with a collection of practical guides.

CNIL in 2010

- 1,569 statements and decisions
- 308 inspections
- 3 warnings
- 111 notices to comply
- 5 financial sanctions, i.e. €32,500 in fines
- 1 denunciation
- 71,410 processing operations notified

In 2010, CNIL received:

- 4,821 complaints
- 1,877 requests for indirect access

Complaints relate primarily to the following sectors:

- Banking – Credit
- Marketing
- Internet/Telecom
- Labour

FACED WITH THE
POTENTIAL THREATS
PRESENTED BY
INFORMATION
TECHNOLOGY AGAINST
CIVIL LIBERTIES, THE
CNIL IS
RESPONSIBLE FOR
ENFORCING COMPLIANCE
WITH THE
"INFORMATIQUE ET
LIBERTÉS" PRIVACY ACT
AND IS ENTRUSTED
WITH 5 MAIN MISSIONS

CNIL'S MISSIONS

5 main missions

Inform

The CNIL informs and assists individuals in the exercise of their rights and obligations. It recommends to the Government any legislative or regulatory measures conducive to adapt the protection of data privacy and civil liberties to technological developments. The CNIL's opinion is required prior to forwarding any bill on data privacy to the Parliament.

Guarantee rights of access

The CNIL ensures that citizens can efficiently access their personal data contained in processed files. On behalf of citizens requesting it, the Commission exercises their right of indirect access to records related to State security, defense and public safety, including police intelligence and investigation files.

Data Protection Officer (Correspondant informatique et libertés or CIL)

Private companies, local authorities, state administrations and non-profit associations may now appoint a Data Protection Officer (or "Correspondant informatique et libertés", CIL). This is a major innovation in the application of the law, stressing prior education and consulting. Once a CIL is appointed, the organization is exempted from the mandatory notification process. The CIL has the duty to ascertain that the organization's information system will expand without jeopardizing the rights of the users, clients and employees. As of January 1, 2011, a total of 7,300 organizations had appointed a Data Protection Officer.

Inventory data files

The CNIL keeps a “Registry of Notifications” available for public consultation, i.e. a list of all notified data processing events and their main characteristics.

“High risk” data processing operations are subject to the CNIL’s prior approval. The Commission issues opinions on government processing based on the national ID number of individuals. It receives notifications on other processing operations. Failure by data controllers to comply with these formalities is punishable by administrative or criminal sanctions.

Verify

The CNIL verifies compliance with the law by checking applications of IT processes.

On its own initiative, the Commission may visit any professional premises for in situ inspections of the data files. It uses the powers under its competence to investigate complaints and gain better knowledge on some records.

In addition, the CNIL monitors the security of IT systems by ensuring that proper precautions are adopted to prevent data from being distorted or disclosed to unauthorized third parties. In the event of observed non-compliance, the CNIL may pronounce various sanctions: warnings, notices to comply,

financial fines up to €300,000, injunctions to desist from processing. Lastly, the Chairman may also file petitions in court to order any necessary measure. On behalf of the Commission, he may report to the Public Prosecutor any breaches of the law brought to his knowledge.

Regulate

The CNIL defines simplified standards to ensure light formalities for the most common data processing operations. The Commission may also decide to waive the notification requirement for data processing categories presenting low risks to civil liberties.

THE PRIME MISSION OF THE CNIL IS TO PROTECT PRIVACY, INDIVIDUAL RIGHTS AND PUBLIC LIBERTIES.



PRIVACY & DATA PROTECTION RIGHTS UNDER THE “INFORMATIQUE ET LIBERTÉS” ACT

Every individual may contact the CNIL to receive assistance in the exercise of their rights (particularly if the right of access has been denied).

. Right of information

Every individual may contact an organization directly to find out if they are listed or not in a data file.

. Right of access

Every individual may, on simple request addressed to the organization and free of charge, have free access to their full personal information in clear language (any codes must be explained). They may also obtain a copy against payment of a fee and duplication costs.

. Right of rectification and deletion

Every individual may directly require their personal data to be corrected (if inaccurate), completed or clarified (if incomplete or equivocal), or updated (if obsolete), or deleted (if such data were not lawfully

collected).

. Right of objection

Every individual may object to their personal data being used for advertising or marketing purposes or disclosed or transferred to any third parties to such purposes.

The individuals concerned must have the possibility of exercising their right to oppose the disclosure of their data to third parties at the time when the data is collected.

The use of automated calling robots or faxes or e-mails for advertising purposes is prohibited unless prior express consent has been granted by the individual.

. Right of indirect access

Every individual may request the CNIL to verify their personal data possibly recorded in records related to State security,

national defense or public safety (right of indirect access).

The CNIL commissions one of its member judges to verify the relevance, accuracy and updating of these data, and may demand their rectification or deletion. In agreement with the data controller, the personal data may be disclosed to the individual.

Focus

- . 47% of respondents to the survey know about the CNIL
- . 34% of respondents feel that they are sufficiently informed of their rights to personal data protection

Ifop - December 2010

OBLIGATIONS OF DATA CONTROLLERS

- . **Notify** the implementation of the file and its characteristics to the CNIL, except as exempted by law or by the CNIL.
- . **Ensure that citizens are in a position to exercise their rights** through information.
- . **Ensure data security and confidentiality**, to protect data from distortion or disclosure to unauthorized third parties
- . **Accept on-site inspections by the CNIL**, and reply to any request for information.

CNIL IN THE WORLD

In Europe

- The **European Union** adopted a "Data Protection Directive" (Directive 95/46) on October 24, 1995, intended to harmonize and guarantee equal individual protection among EU Member States, regardless of the place where personal data are processed.
- To date, the **27 EU Member States** as well as several countries from the European Economic Area (Iceland, Liechtenstein, Norway), have adopted a data protection law and set up an independent oversight authority.
- These independent authorities meet in Brussels

on a regular basis to advise the European Commission on its legislative measures, and harmonize their practices and recommendations to designers and users of information technologies.

The European "CNILs", known as the "**Article 29 Working Party**" by reference to Art.29 of the EU directive creating the group, offer common guidance and publish opinions.

Focus

In developing countries, particularly in South America and Africa, issues of state consolidation, national security, credit development and prevention of epidemics have led to sensitive records being created. The CNIL cooperates with countries wishing to implement privacy and data protection laws, as was the case for instance in Madagascar or Gabon.

Worldwide

- **Many non-EU European countries** have passed similar data protection laws and set up enforcement authorities: e.g. Croatia, Channel Islands, Monaco, Gibraltar, Switzerland, etc.
- **Outside Europe**, various countries such as Canada, Argentina, Australia, New Zealand, South Korea, Morocco, Burkina Faso and Senegal have also adopted legislation and an independent oversight authority. Other states have opted to pass legislation limited to guarantees, to the public sector only, or to some private sector activities, though sometimes without setting up any independent oversight; in such cases, the courts of justice are then responsible for sanctioning any breach of

rights. Such is the case in the United States, Japan, Paraguay, Taiwan and Thailand.

- **Europe still at the forefront:** In an era when high-speed data exchanges via internet are intensifying, the EU Directive 95/46 sets forth the principle according to which personal data may be transferred outside the European Union only if the recipient company or country of destination can offer an "adequate" level of protection.

Data transfers to countries failing to provide "adequate" protection may however be authorized provided that minimum guarantees are given. Such guarantees may result for instance from clauses in an agreement binding on the data exporter and the data importer, or from

corporate rules implemented within companies. These guarantees may include among other the right of access and rectification, data confidentiality, prohibition to use data for advertising or marketing purposes without previously informing the data subject along with measures enabling them to object thereto.

- **The CNIL** participates in the International and Francophone Conferences of Data Protection and Privacy Commissioners. It holds the general secretariat of the Francophone Privacy Commissioners Association.



M E M B E R S H I P O F T H E C O M M I S S I O N

Commissioners	Sectors*
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AlexTÜRK , Senator from Nord district	
Deputy Vice-Chairman	
Emmanuel de GIVRY , Honorary Counsel at the Cour de Cassation	Human Resources
Vice-Chairwoman	
Isabelle FALQUE-PIERROTIN , Councillor at Conseil d'État	Article 29 Working Party Administration & e-voting
COMMISSIONERS	
Jean-Paul AMOUDRY , Senator from Haute-Savoie	Banking & Credit
Jean-François CARREZ , Honorary Presiding Judge at the Cour des Comptes Elected member of Sanction Select Committee	Education & Universities
Dominique CASTERA , Member of Social, Economic & Environmental Council	Cooperation with International police & NGOs
Jean-Marie COTTERET , University Professor Emeritus Elected member of Sanction Select Committee	National Police & State security
Claire DAVAL , Attorney Elected member and Chair of Sanction Select Committee	Justice
Claude DOMEIZEL , Senator of Alpes-de-Haute-Provence Elected member of Sanction Select Committee	Sustainable Development & Housing
Didier GASSE , Master Councillor at Cour des Comptes	Telecom & Internet
Philippe GOSSELIN , Member of Parliament from La Manche	Social & Fiscal Affairs
Sébastien HUYGHE , Member of Parliament from Nord Elected member of Sanction Select Committee	Identity, Defense & Foreign Affairs
Jean MASSOT , Honorary Section President at Conseil d'État	Health & Health Insurance
Marie-Hélène MITJAVILE , Councillor at Conseil d'État	Research & Statistics
Eric PERES , Member of Social, Economic & Environmental Council	Transports & Property Insurance
Bernard PEYRAT , Honorary Counsel at the Cour de Cassation	Commerce & Marketing
Dominique RICHARD , Consultant Elected member of Sanction Select Committee	Cultural & Sports Affairs
GOVERNMENT COMMISSIONERS	
Elizabeth ROLIN	
Catherine POZZO DI BORGIO , Deputy	

* Apart from the Chairman, each of the 17 CNIL Commissioners are specifically in charge of monitoring a dedicated sector of activities. The Chairman is responsible for allocating the Commissioners' duties.

CNIL Contacts

Enquiries and complaints to the CNIL must be addressed by mail to the CNIL Chairman:

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l'Informatique et des Libertés

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