

# **A MARKETING VIEW OVER THE ROLE OF THE PUBLIC AUTHORITIES IN THE PROTECTION OF THE CONSUMERS' PRIVATE SPACE**

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*The concept of privacy, seen in connection with the consumer's private space, and defined in terms of the rights the consumer have to disclose or not, respectively to have protected their personal data has gained an increasing importance, as a result of the organizations' extended and more and more aggressive attempts, within their marketing efforts, to capture, process and use the consumers' personal data. Privacy protection has become an important but, in the same time, extremely sensitive and challenging topic to be taken into consideration by all the stakeholders involved in the processing and employment of the consumers' personal data. A key role in this respect is played by the public authorities acting as data controllers – the Data Protection Authorities, that have to adopt a more proactive and efficient attitude in adopting and implementing policies and processes aiming to ensure a more effective protection of the personal data and private space, conduct privacy impact assessments and continuously improve the specific activities.*

*Paper presents the opinions of the consumers through the results of an exploratory study regarding the importance given to the protection of the personal data, the area of protection of the specific laws, the need for laws regulating the personal data protection, the balance between the public and private entities in providing a proper protection of the personal data, and the relationship between the domestic, European, and international levels in ensuring the protection of the consumers' personal data. Results regarding the role of the public authorities in the protection of the consumers' personal data and private space– in terms of the most appropriate institution to act as a data controller, the rights consumers consider important in relationship with the protection of their personal data and the risks faced in the context of a less effective protection – are also presented.*

*Keywords: consumer, public authorities, personal data, consumer private space, Romania*

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## **Introduction**

The end of the 19<sup>th</sup> century has brought the first formal attempts to conceptualize privacy. In 1887, the Pacific Railway Commission has found that “of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves, not merely protection of his person from assault, but exemption of his private affairs, books, and papers, from the inspection and scrutiny of others” (Langenderfer and Cook 2007: 734). Three years later, in the article “The Right to Privacy”, Louis Brandies has approached and explained the individual’s “right to be left alone” as a response to the loss of privacy experienced during that times (Guarda and Zanone 2009: 337).

In spite of their rich history, the attempts to define *privacy* were rather difficult due to the wide number of related interests such as the personal information control, reproductive autonomy, access to places and bodies, secrecy, and personal development (Kemp and Moore 2007: 58). Many definitions given have tried to explain the content of privacy considering the right to be let alone, limited access to the self, secrecy, control of personal information, personhood and intimacy (Solove 2002: 1087). More, there are points of view stating that privacy cannot be defined as a right (but as a valuable thing deserving a fundamental respect), this being in conflict with itself: if privacy were indeed a right, one could demand protection for it but seeking for the protection of privacy may lead to some violation of privacy (van Swaay 1995: S152).

From a *marketing perspective*, definition of privacy should focus on the personal data and information regarding the consumers. In this respect, privacy has been defined as the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others (Westin 1968: 7). Schoeman adapted the content of privacy at individual level presenting it as a claim, entitlement or right of an individual to determine what information about himself (or herself) may be communicated to others; the measure of control an individual has over information about himself, intimacies of personal identity, or who has sensory access to him; and a state or condition of limited access to a person, information about him, intimacies of personal identity (Jóri 2007:111).

Privacy must be seen in connection with the particular area where its content is applied. The above definitions imply the existence of a *consumer's private space* defined through and including an amount of information referring to the demographic, psychographic and behavioral characteristics of the individuals (*personal data*), and the rights the consumer should have to disclose or not, respectively to have this information protected through the appropriate laws and means (Vegheş, Pantea and Bălan 2010: 263).

Since its emergence in the mid-1960s, privacy protection has been constrained by the fair information practices model to a framework that has been more protective of corporate and government interests than of people's data, let alone of people themselves (Clarke 2009: 129). A key role in this respect is played by the data controllers – the Data Protection Authorities operating in each country. According to the Art 29 Working Party (an influential body comprised of representatives from the European Union Member States' Data Protection Authorities), data controllers should be proactive in at least the following: adopting internal policies and process to implement the requirements of the data protection, put in place mechanisms executing the internal policies and processes, draft compliance reports and carry out audits, carry out privacy impact assessments, and assign responsibility for data protection to designated persons (Wong 2011: 56).

It is obvious that issues of privacy and consent impact the very nature of society and governance, so the society will have to set in place dynamic policies that enable switching, change or adaptation (Elahi 2009: 118). In spite of all these, all the current and proposed measures seem to fall far short of providing a comprehensive system of enabling and protecting a societal expectation of privacy and, in the end, even with a fairly comprehensive system of protections, enforcing those laws and the enforcers themselves, remains problematic (Hough 2009: 412).

### **Methodological Notes**

Data expressing the opinions of the consumers regarding importance given to the protection of their personal data, the area of protection, the need for laws regulating the personal data protection, the balance between the public and private entities in providing a proper protection of the personal data, the relationship between the domestic, European, and international levels in ensuring the protection of the consumers' personal data, the most appropriate institution to act as data controller, the rights associated with the personal data protection, and the risks derived from an inappropriate administration of the personal data have been obtained conducting a research

approach with a larger overall scope, of assessing the exposure, attitude, current and future behavior of the consumers in connection with the direct marketing efforts of the organizations. Data have been collected in January 2010 using a sample including 78 Romanian consumers from the Capital and other cities, aged 18 to 30, with higher education, which have been questioned about all these aspects, as well as about other relevant elements for the way direct marketing is implemented in the Romanian market.

### **Main Findings**

Research has provided a first of set of information about major aspects concerning the personal data protection legal environment in terms of the: importance given by the consumers to the protection of their personal data, the area of protection – as it is defined by the respondents considering their rights as consumers respectively as citizens, the need for a law regulating the personal data protection, the balance between the public and private entities in providing a proper protection of the personal data, and the relationship between the domestic, European, and international levels in ensuring the protection of the consumers' personal data.

Majority of the respondents (70.5 %) consider “very important” the **existence of the appropriate laws and regulations** protecting their personal data and almost all of them (97.4 %) appreciate the protection of their personal data through the specific legal framework “important” and “very important”. As less than 3 % of the respondents have assessed the importance of the personal data protection in a different way (of an average importance, to be more specific), it can be concluded that subject of the protection of the consumers' personal data and privacy is a sensitive one and requires a careful handling and approach from the part of all the interested stakeholders – companies and organizations conducting direct marketing campaigns, public authorities involved in providing the proper legal framework and enforcement of the specific laws and regulations, respectively consumers exerting and defending, when necessary, their rights in terms of personal data processing and protection of their privacy.

Respondents have been asked to define the **area of protection** that specific law and regulations should cover: their personal data and privacy rights as citizens, as consumers or both. Majority of the respondents (79.5 %) have indicated the rights they have both as consumers and citizens as object of the related laws and regulations. Protection of the rights the respondents have as citizens (19.2 %), respectively as consumers (only 1.3 %!) has been indicated, in both cases, by a minority of respondent. This result may suggest several conclusions: first, the respondents seem to be more aware and, consequently, more concerned in terms of the personal data and privacy rights they have both as citizens and consumers; secondly, respondents may have been exposed to direct marketing campaigns – conducted not only by companies selling different goods and services, both also by the non-profit entities and political parties “selling” social initiatives or political candidates; thirdly, the increased aggressiveness of the direct marketing campaigns have led to a more defensive behavior regarding the disclosure of the personal data and protection of the private space not only in a commercial but, as well, in a social context.

In this context, **laws and regulations for the protection of the personal data are necessary** for 87.2 % of the respondents, while the remaining 12.8 % considering them “rather necessary”. The need for legal framework that guarantees for an effective protection of the personal data may be one of the major motivators of this attitude. Further, this greater than before need for protection is the result of the combination between the higher exposure of the consumers to the direct marketing campaigns conducted by the companies, organizations and public authorities, and the increased aggressiveness of these campaigns.

The **balance between the public and private entities** in providing a proper protection of the personal data places in a more important position the public authorities, indicated as the best entities capable to exclusively provide an effective protection of the personal data by the majority of the respondents (44.9 %). By contrast, private institutions have been indicated in an exclusive

manner by only 15.4 % of the respondents. The relatively high percentage (39.7 %) obtained by the mixed option – protection of the personal data ensured by a partnership of public and private entities – may suggest, on a hand, a relative mistrust in the capabilities of the public authorities to provide an effective protection of the consumers’ personal data and private space and, on another hand, leads toward an integration of a private component in the overall activities conducted by the public data controllers. Involvement of this private component may represent the response given to the consumers’ expectation for a better control over the functioning of the public authorities in the field and, in the same time, a guarantee given to consumers that their personal data and private space protection will be more effective.

Romania’s adhesion to the European Union, as well as the increased effects of globalization, are the main drivers of taking in consideration the relationship between the **domestic, European, and international levels** in the protection of the consumers’ personal data. Majority of the respondents (85.9 %) have indicated that laws protecting the personal data should be European (34.6 %) and/or international (51.3 %) one. Preference for international and/or European laws and regulations may be seen both as a supplementary guarantee needed by the respondents for an effective protection of their personal data protection and private space, and, unfortunately as sign of a potential mistrust in the domestic legal framework and institutions enforcing it. The low level of trust in the domestic data controllers can be taken in consideration when explaining this result because the domestic law of personal data protection is nothing more than a very close, not to say identical, version to the European Directive 95/46/EC: so, maybe the law is appropriate, yet the ways data controllers enforce it, allow and support the protection of the consumers’ personal data may represent the real problem.

Respondents have also indicated the **most appropriate institutions** acting as data controllers choosing between a set of diversified options including public and private, specialized, less specialized and even not specialized, professional and other entities. Majority of the respondents (83.3 %) have indicated the National Supervisory Authority for Personal Data Processing (NSAPDP) as the most appropriate public institution to act as data controller administrating the processing of the consumers’ personal data and private space protection. This result expresses not necessarily the appropriateness of acting as data controller but the high degree of awareness of the NSAPDP. The Association for Consumer Protection (mentioned by 55.1 % of the respondents) and the National Authority for Consumer Protection (50.0 %) have been indicated by at least a half of the respondents. The expression “consumer protection”, present in the appellation of the entities mentioned above, suggest clearly the relationship between the personal data and the protection of the consumers and, also, the rather defensive attitude of the respondents regarding their personal data and private space. The triad National Supervisory Authority for Personal Data Processing – Association for Consumer Protection – National Authority for Consumer Protection synthesizes almost perfectly the solution regarding the consumers’ personal data and private space: a partnership between the public authorities and private entities for ensuring an effective consumers’ protection.

**Table 1. Institutions indicated by respondents as appropriate to act as data controllers**

<b>Institutions</b>	<b>Percentages</b>
National Supervisory Authority for Personal Data Processing	83.3
Association for Consumer Protection	55.1
National Authority for Consumer Protection	50.0
General Direction of Persons’ Information Administration	23.1
Ministry of Internal Affairs	16.7
Romanian Direct Marketing Association	14.1
Government of Romania	3.8
Ombudsman	2.6

The General Direction of Persons' Information Administration, the Ministry of Internal Affairs, and the Romanian Direct Marketing Association have been mentioned by smaller parts of the respondents. Indication of the domestic professional in the field most connected with the personal data employment may suggest both a possible expectation of the consumers to see the association more involved in the protection of their personal data and a potential direction of development of the association's activities.

The Government of Romania and the Ombudsman held rather peripheral positions in this context although, until the establishment of the NSAPDP, Ombudsman has been the legal domestic entity covering the area of personal data protection. As a final observation, the lack of mentions for the Open Society Foundation and the Group for the Social Dialogue indicates an increased knowledge of the respondents of the institutional side of the personal data protection and, by consequence, a higher concern for the related problems.

Respondents were asked to indicate **the most important rights** the laws regarding the protection of their personal data grant them. The right to be informed about the scopes of the data processing (mentioned by 88.5 % of the respondents) and the right of making objections against the data processing (82.1 %) are the important rights and present a high interest for the respondents. They are followed by the rights to access their personal data (73.1 %), to refer to a court of law in matters regarding the processing of the personal data (67.9 %), and to intervene upon the data already collected and processed by the databases owners (62.8 %). The least important right indicated by respondents seems to be that of not being the subject to an individual decision in terms of the personal data processing and usage (29.5 %).

Based on these results, consumers seem to allocate a higher importance to their rights as providers of personal data – supplying this data being more important for them than their later processing, with a particular focus on prevention and defending against the inappropriate attempts of collecting and processing their personal data.

Improper administration of the personal data may affect the consumers' confidence in the data processors and data controllers. In terms of the risks associated with a poor personal data processing, respondents have indicated, as major threats, the potential abuses from the part of the private entities (96.2 %) and frauds that might be suffered as consumers (75.6 %). Potential abuses suffered from the part of the public authorities (53.8 %) and the increased exposure of their private life (50.0 %) have also been identified as significant risks, while the limitation of their private space (30.8 %) has been indicated as a rather tolerable risk.

These results are explained by the relatively increased exposure of the respondents to the more aggressive direct marketing campaigns of the companies and organizations – in relationship with the consumer frauds and other potential abuses from the private entities, by the relatively higher trust the respondents have in the public authorities by comparison to the private entities, and, last but not least, by the rather unclear identification of the content of their private space.

### **Limits of the research**

The research approach has been conducted under the context created by the existence of the limits related to the set of the variables considered to define and measure the consumers' opinions regarding importance given to the protection of their personal data, the area of protection, the need for a law regulating the personal data protection, the balance between the public and private entities in providing a proper protection of the personal data, and the relationship between the domestic, European, and international levels in ensuring the protection of the consumers' personal data, and, respectively, the sample and the sampling procedure used (further research should be conducted using a sample covering categories of respondents differently defined in terms of their demographics such as age, education and income).



## Conclusions and main implications

Consumers tend to consider “very important” or at least “very important” the existence of the appropriate laws and regulations protecting their personal data and the subject of the protection of the consumers’ personal data and privacy is sensitive and requires a careful handling and approach from the part of all the interested stakeholders. The area of protection of the specific laws and regulations should cover their personal data and privacy rights both as citizens and consumers or both. Consumers seem to be more aware and, consequently, more concerned with the personal data and privacy rights in the context of the more aggressive direct marketing campaigns conducted targeting them. Laws and regulations for the protection of the personal data are simply necessary for an effective protection of the personal.

The balance between the public and private entities places in a more important position the public authorities but the mixed option – protection of the personal data ensured by a partnership of public and private entities – is appreciated by a significant part of the consumers. Laws protecting the personal data should be rather European and/or international just to offer a supplementary guarantee for an effective protection of their personal data protection and private space.

The National Supervisory Authority for Personal Data Processing (NSAPDP) has been indicated as the most appropriate public institution to act as data controller administrating the processing of the consumers’ personal data and private space protection. The triad National Supervisory Authority for Personal Data Processing – Association for Consumer Protection – National Authority for Consumer Protection synthesizes almost perfectly the solution regarding the consumers’ personal data and private space: a partnership between the public authorities and private entities for ensuring an effective consumers’ protection.

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