

Question and Answer: Class Actions
Brussels Data Protection Day

Question:

The question is to two of these panelists and is related to collective action.

Many people, who have followed the revision of the directive, know that a private right of action, in the form of collective action, as a form of redress, is one of the elements in the revision of the EU Data Protection directive. I have questions to Mark Rotenberg and Jennifer Stoddart.

Marc Rotenberg, based on your experience in the USA, would you recommend that Europe follow US experience of class actions in privacy cases? Jennifer Stoddart, the same question really, do you have such cases, privacy cases, collective action on privacy cases in Canada in the privacy field and would you recommend Europe follows this path?

Answers:

Jennifer Stoddart:

I think that class actions, are a hugely important potential tool. Canada of course doesn't have the experience in class actions that the US does but we do have that mechanism. It is just being tested now in Manitobah where a gentleman in the privacy sector has just been certified to take forward a class action against Google over the Buzz fiasco last winter. From the point of view of a regulator, it is interesting because often we have incidents that involve thousands if not millions of citizens but it's very hard to get them to come forward to a data regulator. Even then, we don't have the mechanisms to treat a million complaints. So this would be, I think, a very useful mechanism for group action and should be encouraged.

Marc Rotenberg:

I think Class Action is an effective mechanism to protect legal rights. Essentially the problem that class action seeks to address is when you have a large number of people who have suffered a small but significant amount of harm. There is no incentive for any individual in the group to bear the costs that would be required to seek remedy yet taken as a whole it becomes obvious that there is a great deal of harm that needs to be addressed. So that's the essential theory of the class action and is why you see this in environmental law and in privacy law. Now, there can be problems with class action to be sure but I think as a starting point it is an appropriate way to understand ensuring an effective legal remedy for privacy laws.