

# Data Protection Ireland

Volume 4, Issue 5

September/October 2011

## Headlines

- Jobs site notifies users of breach, p.17
- Website attracts attention of Billy Hawkes, p.19
- Room for improvement at Google's UK HQ, p.20

## Contents

Foreword	2
New rules on cookies — what they say and what omissions from the early draft tell us	4
Clarifying consent	7
Privacy backlash — freedom campaigners' fantasy or imminent peril for business?	10
Data protection in India	15
News & Views	17

## Online behavioural advertising framework lambasted

The Article 29 Working Party has written to the Internet Advertising Bureau and the European Advertising Standards Alliance expressing fundamental concerns about the EASA's industry-wide, self regulatory standard for online behavioural advertising.

The 'Best Practice Recommendation on Online Behavioural Advertising' was drafted following the adoption of the revised e-Privacy Directive (2009/136/EC) in 2009. Published in April 2011, the Recommendation

is being rolled out via national industry associations and self-regulatory organisations. Pivotal amongst the Working Party's concerns is that although the Recommendation gives users the opportunity to object to being tracked for the purpose of behavioural advertising, tracking and serving adverts takes place *unless* people exercise the objection.

The Working Party's letter said that "while this mechanism is welcome and constitutes an improvement to the current situation, it does not meet the requirement

to obtain informed consent."

The Working Party's key criticism focuses on the fact that individuals are given the opportunity to object to tracking, but are not required to provide their prior, informed consent. It considers that the mechanisms proposed in the framework do not permit a 'clear indication of a user's wishes', leading to consent which, in the view of the Working Party, will be merely 'illusory'.

In the same letter, the Working Party also  
*(Continued on page 17)*

## Facebook Ireland Ltd under investigation

The Office of the Data Protection Commissioner has confirmed that the Dublin-based headquarters of Facebook will be subject to a massive audit following 17 separate privacy complaints.

The ODPC received the complaints from Austrian-based lobby group, 'Europe v Facebook', in late August. The complaints questioned the legality of various Facebook features, including the ability for users to 'tag' other users without

the subject's consent, and a face-recognition feature which, according to the group, is not accompanied by proper information to inform users of their privacy rights.

The decision to file the complaints in Ireland was based on Facebook's Terms of Use, which declare users outside the US and Canada to be in a contract with Facebook Ireland Ltd. The group say that "for years, the shortcomings of Facebook's privacy

practice have been discussed, thought and talked about. Besides a couple of individual law suits there have been almost no consequences."

In response, a spokesperson from the ODPC said "we will have to go and audit Facebook, go into the premises and go through in great detail every aspect of security. It's a very significant, detailed and intense undertaking that will stretch over  
*(Continued on page 17)*