

An Coimisinéir
Cosanta Sonraí



Data Protection
Commissioner

23 July 2013



AUSTRIA

Dear Mr. [REDACTED],

I refer to your recent correspondence to this Office in relation to Apple Distribution International which we have reviewed. Please find below our assessment of the matters outlined in your correspondence.

The Irish Data Protection Acts 1988 and 2003 which transpose the 1995 EU Data Protection Directive (95/46/EC) permits Irish based data controllers to contract with third party data processors to provide services on their behalf, Section 2C(3) of the Acts refers. Where those third party data processors are based outside the European Economic Area (EEA), the Irish based data controller must also comply with Section 11 of the Data Protection Acts 1988 and 2003 which specify conditions that must be met before personal data may be transferred to third countries.

Organisations that transfer personal data from Ireland to third countries – i.e. places outside of the European Economic Area (EEA) – will need to ensure that the country in question provides an adequate level of data protection. The US 'Safe Harbor' arrangement has been approved by the EU Commission, for US companies which agree to be bound by its data protection rules. In the case of countries that have not been approved in this way, there are a number of other ways in which a data controller can ensure that the data protection rights of individuals are respected. The Irish based data controller can use EU-approved 'model contracts' which contain data protection safeguards to EU standards.

Our website guidance on this matter suggests that a best practice approach would be for a data controller planning an international data transfer to consider first whether the third country provides an adequate level of protection and to satisfy himself or herself that the exported data will be safeguarded in that country. In the case of data transfers to the US, we recommend that the data controller exporting the data based in this jurisdiction may want to encourage the importer to subscribe to the Safe Harbor principles.

In the case of Apple Distribution International (ADI), we note that Apple Inc, USA acts as a data processor for ADI. We note also that Apple Inc, USA has a current 'Safe Harbor' self-certification entry.

The 'Safe Harbor' Privacy Principles as issued by the U.S Department of Commerce and agreed by the EU Commission pursuant to the EU Data Protection Directive provide that "adherence to these Principles may be limited: (a) to the extent necessary to meet national security, public interest, or law enforcement requirements; (b) by statute, government regulation, or case law that create conflicting obligations or explicit authorizations, provided that, in exercising any such authorization, an organization can demonstrate that its non-compliance with the Principles is limited to the extent necessary to meet the overriding legitimate interests furthered by such authorization". Similar provisions are also contained in the model contracts approved by the EU Commission for the transfer of personal data to third countries.

We consider that an Irish-based data controller has met their data protection obligations in relation to the transfer of personal data to the U.S. if the U.S. based entity is 'Safe Harbor' registered. We further consider that the agreed 'Safe Harbor' Programme envisages and addresses the access to personal data for law enforcement purposes held by a U.S. based data processor.

We are aware of and welcome the fact that the proportionality and oversight arrangements for programmes such as PRISM are to be the subject of high-level discussions between the EU and the USA. The issue was already raised by the (Irish) Minister for Justice in his meeting with the US Attorney-General on the occasion of the EU-US meeting on justice and law enforcement issues in mid-June (<http://www.justice.ie/en/JELR/Pages/PR13000237>). We also welcome the fact that the broader issue of the proper balance to be struck in a democratic society between the right to protection of personal data and measures to combat terrorism and serious crime - such as in relation to the Data Retention Directive and the activities of European intelligence services - are also receiving attention in the EU, notably in cases before the European Court of Justice and in the context of the negotiation of new data protection laws.

Yours sincerely,



Ciara O'Sullivan
Senior Compliance Officer