



15 November 2013

The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
Sydney NSW 2001  
Email: [privacy@alrc.gov.au](mailto:privacy@alrc.gov.au)

Dear Sir/Madam

### **Serious Invasion of Privacy Law Reform Issues Paper 43**

eBay and PayPal are pleased to provide this submission in response to the Australian Law Reform Commission's (ALRC) *Serious Invasion of Privacy Law Reform Issues Paper 43* (Issue Paper).

In terms of the substantive issues before the ALRC, eBay considers that the case with respect to establish a statutory cause of action for a serious invasion of privacy in the digital era, need not be considered at this point in time.

This is especially the case given the significant reforms currently underway in the Australian privacy regime.

In terms of the question regarding what other innovative ways the law should prevent serious invasions of privacy in the digital era in relation to analysis and aggregation of data, the task before the ALRC is to ensure that the right balance is struck between the ability to personalise an online service according to a consumer's preference and how the law might deal with innovative ways to reduce potential serious invasions of privacy in the digital era.

### **eBay Inc.'s approach to Privacy**

eBay Inc. is a diverse family of businesses supporting millions of users ranging from individual consumers to merchants and retailers of every shape and size.

Over the years, we have learnt that one of the keys to success is engendering consumer trust and confidence. Confidence is in great part built through consumers trusting that businesses will adhere to certain rules for protecting individual privacy; both those rules required by statutory principle and those followed by sound business practices. Trust in our privacy protections has enabled eBay to be successful in growing our businesses.

eBay connects millions of global buyers and sellers through eBay, the world's largest online marketplace.

PayPal provides innovative technology that encourages consumer privacy and consumer control. PayPal acts like a digital wallet where consumers can securely store all their payment options, and make payments



online without disclosing this key set of information. It enables individuals to securely, easily and quickly send and receive online payments.

eBay Inc. recognises the responsibilities which come with handling the personal and private information of both individuals and organisations, requires all of its companies to adhere to strict standards of behaviour. We have sought to be a leader in the field of handling personal information.

In addition to eBay Inc.'s privacy principles and the practices described in our privacy policies, eBay Inc. has established a set of Corporate Rules (also referred to as Binding Corporate Rules). These Corporate Rules are a commitment by eBay Inc. to adequately protect our users' personal information regardless of where the data resides.

eBay has also created a privacy policy that applies in Australia<sup>1</sup> and "Privacy Central" located within the US Security and Resolution Centre<sup>2</sup> which explains our global privacy principles, privacy policy and provision of choice of notification settings from our users<sup>3</sup>.

Our Privacy Centre has information that explains in plain English what data eBay collects, how we use it, why and to whom we may disclose it, and, which explains how users may review their own personal information stored with us and the choices available to change settings. In addition we also provide extensive onsite education including providing a security centre<sup>4</sup> and other help pages<sup>5</sup> as well as links to third party resources.

Our core privacy principles remain the same worldwide (see Appendix).

Our high standards in the field of privacy have been publicly recognised by a number of independent sources, including:

- the HP Privacy Innovation Award for best privacy practices in 2003;
- placement in the top of the Privacy International list of privacy-proactive practices online in 2007; and
- the Ponemon Institute Survey's most trusted brand for privacy by consumers in both 2004 and 2009.

eBay Inc. has established a global team dedicated to privacy matters. We have made it a corporate policy worldwide to notify customers if there is any suspicious activity in relation to an account or unauthorised access of personal information.

### **Treatment of Privacy Breaches**

eBay commissioned a survey conducted by The Paradigm Shift Research Consultancy in March 2012 to find out the views of eBay users concerning privacy and data breach notification.

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<sup>1</sup> <http://pages.ebay.com.au/help/policies/privacy-policy.html?rt=nc>

<sup>2</sup> <http://resolutioncenter.ebay.com/>

<sup>3</sup> [http://pages.ebay.com/securitycenter/privacy\\_central.html](http://pages.ebay.com/securitycenter/privacy_central.html)

<sup>4</sup> <http://ebay.com/securitycenter/>

<sup>5</sup> <http://pages.ebay.com/help/policies/tns-tutorials.html> , <http://pages.ebay.com/help/account/protecting.html>



The survey comprised of a representative sample of 700 Australians who visited eBay in the 12 months leading up to March 2012.

One of the key findings of the survey included Australians nominating identity theft (86%) and loss of financial data (83%) as their areas of greatest privacy concern.

This data reinforces eBay Inc.'s position that consumers should be notified when there is a serious risk of identity theft or fraud for financial gain but that notification should not be required where potential harm is nominal.

### **Incentives to Prevent Breaches and Improve Security**

eBay Inc. considers that the penalties under the Privacy Act as it currently stands and as it will be amended in March 2014 are sufficient to cover serious data breaches. The most significant incentive for companies and organisations to ensure they prevent breaches, is the risk of financial and reputational loss. US based Ponemon Institute found that the average cost of a data breach in Australia had risen to \$2.16m in 2011<sup>6</sup>.

In addition remedies are available under the Privacy Act for data breaches, particularly in the case of post March 2014 where the Australian Privacy Commissioner will be empowered to impose significant fines and penalties of up to \$1.7m for failure to properly secure data or other interferences in privacy<sup>7</sup>.

The Australian Privacy Commissioner also currently has powers to investigate privacy issues between organisations and individuals by way of apology, compensation or other action. Enacting an additional statutory cause of action would constitute additional regulation.

### **Managing Consumer Choice and Privacy in the Online World**

The Issues Paper raises questions in relation to what other innovative ways may the law prevent serious invasions of privacy in the digital era. In this discussion mention is made of physical and online shopping including analysis and aggregation of data.

eBay considers that it is important that the right balance is struck between the ability to personalise an online service according to a consumer's preference and how the law might deal with innovative ways to reduce potential serious invasions of privacy in the digital era.

To give an offline world example, when we visit a café we've been to many times, the owner greets us by name and ushers us to our favourite booth while the barista starts to prepare the coffee we normally order, we see this as excellent service. In fact we see this as quintessential customer service. It's hard to imagine a scenario where we would feel uncomfortable about this sort of behaviour: it is flattering, fast and often just what we want. In the offline world the concept of personal customer service and what's appreciated, will vary depending on the environment we are in, the nature and extent of our past dealings with the business and – of course – our personal preferences.

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<sup>6</sup> [http://www.ponemon.org/local/upload/file/2011\\_AU\\_COdB\\_Final\\_5.pdf](http://www.ponemon.org/local/upload/file/2011_AU_COdB_Final_5.pdf)

<sup>7</sup> Section 13 of the *Privacy Act 1988*



One way to attempt to innovate online is to personalise what customers see: personalisation. Personalisation seeks to satisfy the needs of individuals. Data gleaned from previous engagements is used to determine the differences between individuals. Results are (theoretically) relevant to the individual user, based on the user's implicit behaviour and preferences and explicitly given details<sup>8</sup>.

Traditionally, organisations who offered personalised services, could charge a premium for their goods or services. The personalisation of online activity has now become a necessity to acquire and retain customers, who are spoiled for choice.

Personalisation in the online world relies on the knowledge of a consumer and the ability to cater to their needs. Many consumers are prepared to exchange private information on the basis of opt-ins, not shared by third parties to receive a benefit. A 2012 Accenture survey found 75% of online shoppers prefer retailers that use personal information to improve their shopping experience<sup>9</sup>. The same survey found that 61% would trade privacy for personally relevant offers.

The key for successful long terms development of the internet is how to innovate and grow while addressing perceived and actual privacy concerns. Thus the future will reflect a balance of personalisation and privacy.

Should you require further information regarding this submission, please do not hesitate to contact me at [sgrigorian@ebay.com](mailto:sgrigorian@ebay.com).

Yours sincerely

Sassoon Grigorian  
**Head of Corporate Affairs (Acting)**

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<sup>8</sup> Centre for Internet Safety, Personalisation Managing Consumer Choice and Privacy April 2013 ISBN 978-1-922017-05-5

<sup>9</sup> <http://www.accenture.com/us-en/Pages/insight-shopper-preferences.aspx>



## Appendix

### eBay Core Privacy Principles

1. We will not sell or rent your personal information to third parties for their marketing purposes and will only disclose your personal information in accordance with our Privacy Policy and / or with your explicit consent.
2. Third parties are not permitted to sell the information we provide to them, to market directly to you, or to disclose it in any other way without your explicit consent.
3. We share your personal information with Internal Service Providers for our operations only to facilitate or outsource an eBay service or operation when absolutely necessary and under confidential restrictions.
4. We share your personal information with other eBay members in accordance with our Privacy Policy to help facilitate transactions and to allow members to contact you.
5. We disclose limited personal contact information to verified requests by law enforcement and government officials who conduct criminal investigations, and require a subpoena for additional personal information, in accordance with our Privacy Policy.
6. We give you choices about how you wish to be contacted in the Preferences section of My eBay.
7. We will provide you with notice if our privacy policy changes and an opportunity to reject such changes.
8. We let you change your personal information so that you can keep it up to date.
9. Other eBay companies that have access to your personal information in accordance with the policy are required to protect your personal information at least as strictly as we do.
10. We use safe, secure technology and other privacy protection programs to keep your personal information secure on eBay.