

Anti-Doping and International Transfers

Working Party Position

The Working Party's opinion on the International Standard for the Protection of Privacy and Personal Information (WP 162) creates many obstacles to the international exchange of personal data in the anti-doping context. In particular, the Working Party suggests that:

- **the data protection laws applicable to WADA in Canada and Quebec may not provide an adequate level of data protection** (see page 13 of the Working Party's opinion);
- **athletes cannot validly consent to the international transfer of their personal data**, because the Working Party believes the consent is not freely given;
- **international anti-doping efforts do not serve an important public interest** (see page 14 of the Working Party's opinion). The opinion goes on to suggest, incorrectly, that "important public interests" must be set out in national law; and
- **mass, repeated or structural data transfers should not occur on the basis of the derogations contained in article 26(1) of Directive 95/46/EC** (see page 14 of the Working Party's opinion).

Did you know?

- The French NADO performed over 100 tests on non-EU samples in 2007. The results must be shared with the competent NADOs and IFs.
- During the Beijing Games more than 500 European athletes were tested. The results were shared with the IFs and NADOs.
- Whereabouts information and TUEs for European athletes will need to be shared: (1) with the IOC in Vancouver (Canada) for the 2010 Winter Games; and (2) with South Africa for the 2010 World Cup.
- Foreign ADOs order tests on athletes in Europe. The results must be shared with the foreign ADOs.

WADA's Perspective

- To date, the Working Party has been strongly focussed on identifying issues of concern, rather than exploring workable solutions to these issues. This approach has resulted, in practice, with some ADOs using the Working Party's opinion to question international cooperation in the fight against doping.
- Both Personal Information Protection and Electronic Documents (PIPEDA) and Quebec's data protection law offer an adequate level of protection. The adequacy of Quebec's law has not yet been formally recognised, due to a backlog of adequacy proposals rather than any doubt concerning the protection offered by Quebec's data protection law. Such administrative delay should not be permitted to cause detriment to WADA or the wider sporting community.
- Consent can form a valid basis for the international transfer of data, provided that: (1) athletes are informed of the consequences of withholding consent; and (2) the consequences of not providing, or withdrawing, consent remain within the scope of the athlete's participation in sport.
- The fight against doping in sport undoubtedly serves an important public interest (see Paper 1). Furthermore, international data transfers are contemplated by international law. The UNESCO Convention and the Convention of the Council of Europe expressly call for international cooperation, which inevitably involves the exchange of information. Whilst individual members have accepted international data transfers on the basis of these conventions, the Working Party has not yet given consideration to permitting transfers on this basis.
- The Working Party's traditional aversion to use of the derogations in Article 26(1) is unwarranted in this instance because anti-doping efforts: (1) serve an important public interest; and (2) are backed by international law. Moreover, the International Standard for the Protection of Privacy and Personal Information will continue to protect personal data after the transfer.

Helpful Links

- **UNESCO Convention:**
http://portal.unesco.org/en/ev.php-URL_ID=31037&URL_DO=DO_TOPIC&URL_SECTION=201.html
- **International Standard for the Protection of Privacy and Personal Information:**
http://www.wada-ama.org/rtecontent/document/IS_PPPI_Final_en.pdf