Guest lecture – Privacy and Data Protection

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Content of the lecture

Part 1: Right to privacy
Part 2: General Data Protection Regulation
Right to Privacy
What is privacy?

- Right to be left alone
- Public disclosure of private facts
- Freedom to think and create
- Informational self-determination
- Limits on government: surveillance
- Data breaches
- Online tracking

...
What do you have to hide?
Privacy as a fundamental right in Europe

**European Convention on Human Rights**  
(Council of Europe)

- Article 8 – Right to respect for private and family life
- European Court of Human Rights (ECtHR)

**Charter of Fundamental Rights of the EU**

- Court of Justice of the EU (CJEU)
- Articles 7 (Respect for private and family life) and 8 (Protection of personal data)
Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.
Privacy in the EU vs. in the U.S.

- **Fundamental right**
  - Processing personal data is prohibited!
  - One ring to rule them all

- **Constitution: 4th amendment**
  - Anything goes!
  - State laws / sector specific laws
On terminology...
General Data Protection Regulation
GDPR – change in legal framework
HE'S MAKING A LIST, HE'S CHECKING IT TWICE
HE'S GOING TO JAIL FOR GATHERING AND USING PERSONAL INFORMATION WITHOUT CONSENT

1 MONTH UNTIL GDPR DAY AND NOTHING DONE?
I TOO LIKE TO LIVE DANGEROUSLY.

I DON'T KNOW HOW TO PUT THIS BUT...

AFTER GDPR ENFORCES: WHO ARE YOU?

GDPR IS KIND OF A BIG DEAL
THE MAN HAS NO NAME
What's the big deal?

1. GDPR is a new law that applies Europe-wide

2. Changes in how to do things
   - Risk based approach
   - Accountability, including documentation
   - Mandatory rules for contracts

3. Changes in what to do
   - Transparent data breach notification
   - "New" rights (data portability, access)

4. GDPR raises the stakes – sanctions for non-compliance
   - Up to 20 M€ or 4 % of global annual turnover
Material and territorial scope

Processing of *personal data*

Territorial scope

Established in the EU or

Processing activities either offer goods or monitor behaviour of data subjects within the EU
GDPR terminology
What is personal data?

• Any information relating to an identified or identifiable natural person
  • directly or indirectly
  • such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person

• GDPR clarified that
  • location data and
  • online identifiers may also be personal data
Anonymous / pseudonymous data

- **Anonymous data**
  - Data rendered anonymous in such a way that the person is not or no longer identifiable
  - Does not relate to an identified or identifiable person (not personal data) -> GDPR does not apply
  - De-anonymisation through combination with other sources?

- **Pseudonymous data**
  - New concept in data protection legislation
  - Processing in such a way that the data can no longer be attributed to a specific data subject without the use of additional information
  - Still personal data
  - Risk mitigation tool
What is processing?

The GDPR mentions these as examples:

1. Collection
2. Recording
3. Organisation
4. Structuring
5. Storage
6. Adaptation or alteration
7. Retrieval
8. Consultation
9. Disclosure...

...the list goes on and is not exhaustive
Data controller and processor

**Controller:** Determines the purposes and means of the processing

**Processor:** Processes data on behalf of and under the instructions of the controller

**NOTE!** New strict requirements for the contract between controller and processor.
Processing of personal data is forbidden!
(except for...)
Lawfulness of processing

"Processing shall be lawful only if and to the extent that at least one of the following applies:

1. Consent
2. Contract
3. Controller's legal obligation
4. Vital interests of the data subject
5. Public interest/official authority
6. Controller's legitimate interest
GDPR's requirements for consents

A valid consent is:

- Freely given
- Specific (i.e. not bundled)
- Informed
- Unambiguous
- Active action
- Easy to revoke

+ parental consent?
+ burden of proof on the company!
Data subject rights & enforcement
Data subject rights - overview

Old & new rights

Right to be informed
Access
Rectification
Erasure (right to be forgotten)
Restriction
Data Portability
Right to object
Enforcement

Fines

Severe breaches: Up to 20 MEUR or 4 % of worldwide annual turnover of the ‘undertaking’, whatever is higher

Other breaches: 10 MEUR or 2 %, whatever is higher

Compensation to data subjects

Individuals also have a right to compensation for material and non-material damage

Can be represented by NGOs
GDPR: noyb.eu filed four complaints over “forced consent” against Google, Instagram, WhatsApp and Facebook

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#1: Valid consent?
#2: Right to access
#3: Anonymization and pseudonymization
Thank you