

**Legal issues concerning
Data Privacy and
Technology generated
by the
Draft (2012) EU DP
Regulation**

**Warm Welcome!
Joint BCS LAW-IRMA
30 Sept 2013
Cher Devey**

Claimers/Disclaimers

This presentation in terms of views, opinions, comments, suggestions expressed here represent my own personal interests, feelings and expressions and not those of the people, institutions or organizations that I may or may not be related with unless stated explicitly

Any errors/omissions are mine alone

Any questions/answers raised will be noted without storage and disclosure of your identity

**Your privacy is respected and
I trust others will do too**

**Thank You
Cher**

Agenda

- Background
- The General Data Protection Regulation 2012
- Setting the Scene
- Forum for Dialogue

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What does privacy mean to you?

Is it important to you?

Why protect it?

Privacy can mean different things at different times to a single person

Privacy is important because it protects the diversity of personal choices and actions, not because it protects the freedom to harm others and commit crimes

The core of the preoccupation with the right to privacy is protection against the misuse of personal sensitive information

A Fundamental Human Right

A Right to Respect...with Exception

Concept of Privacy

Territorial privacy by protecting the close physical area surrounding a person

Privacy of the person by protecting a person against undue interference

Informational privacy by controlling whether and how personal data can be gathered, stored, processed or selectively disseminated.

Why protect?

Why privacy deserves protection

Informational-based harm

Informational inequality

Informational injustice

Encroachment on moral autonomy

Philosopher Jeroen van den Hoven

EU Data Privacy Laws

Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (DP Directive)

Complex interplay of entities

Control of personal data

Directive 2002/58/EC the processing of personal data and the protection of privacy in the electronic communications (e-privacy Directive)

Privacy of the individuals

Driving Force

Socio-technical Systems and Practices

Pervasive surveillance

Massive databases

Give Internet users more control
over their personal data

The General Data Protection Regulation (GDPR)

A General Data Protection Regulation covering data processing by the private sector and public authorities (Jan 2012)

The Albrecht Report proposes substantive amendments to the Regulation (Jan 2013)

Who will it affect/effect ?

GDPR

Any companies **processing** personal data

The number of **data subjects** involved in the processing activities

Controllers (not in the EU) processing activities, including monitoring **aimed** at offering goods and services to EU citizens

GDPR

Definition

Consent

Breach notification

Fines

Controller, Processor and Producer

Principles and Concepts

Demonstrate compliance

The Devil is in the Details...

Principle

Data protection by design and by default is applauded as a core innovation of the reform

This would ensure that only data that are necessary for a specific purpose will actually be processed

Processing

Producers, data controllers and data processors shall take technical and operational measures to ensure such compliance in the design, set-up, and operation of automatic data processing or filing systems

Article 5 1a (98)

Producers

Data processors and producers shall implement appropriate technical and organisational measures and procedures to ensure that their services and products allow controllers **by default** to meet the requirements of this Regulation, in particular those referred to in paragraph 1 and 2

Article 23 – para 2 a (178)

Producers

Producers of automated data processing systems (i.e. hard- and software) should also take into account the **principle of privacy by design and by default**, even if they do not process personal data themselves

Article 5 para 1a (98)

Article 23 para 2a (178)

Protection by Design

The principle of data protection by design require data protection to be embedded within the entire life cycle of the technology, from the very early design stage, right through to its ultimate deployment, use and final disposal

The Report (41)

Rights

Right to access/portability

Right to rectification

Right to erasure and to be forgotten

Right to object

Not absolute Rights

Right to Freedom of Expression

Transparency & accountability

How to comply or/and put into practice?

Legitimate vs Practical

The Rights of Subject vs Others

Legitimate reasons and Shift of Burden

Freedom of expression and Others

Human errors - negligent

Review policies, procedures
and documents

IT solutions?

Privacy protection

Sectors, Products and Services

Throughout systems life cycle from design to procurement to implementation and during the life cycle of the data



Principles and concepts are contextual

Setting the Scene

- Privacy Protection
- Privacy vs Security
- Privacy by Design
- Individual vs Others
- Many Facets
- Reconciling Questions

Privacy Protection

Privacy

Anonymity

Pseudonymity

Unlinkability

Unobservability

Security

Confidentiality

Integrity

Authenticity

Availability of personal
data are ensured

When security is compromised is
privacy violated?

Individual's right to privacy vs
State's right to know

Privacy vs Security

Privacy : a fuzzy concept; difficult to protect

No single accepted definition, instead definitions abound

Security : absence of risk or danger to persons and things

Is privacy analogous to data security?

Privacy vs Security

Privacy : no agreed-upon methodology that supports the systematic engineering of privacy into system

Security : know what to address with what means

Conceptually and methodologically privacy is often associated with security

Privacy vs Security

Privacy is a complex issue : different users ; different expectations

Security : focus on obscurity tools

Data Privacy compliance :

privacy preserving and transparency tools ; access/portability, rectification and erasure

Privacy by Design

Privacy should not be treated as an after thought but rather as a requirement in the design of IT systems

The goal of protecting the individual's right to privacy and the original goal of the information technology can be attained simultaneously

Positive sum approach

ICO on Privacy by Design

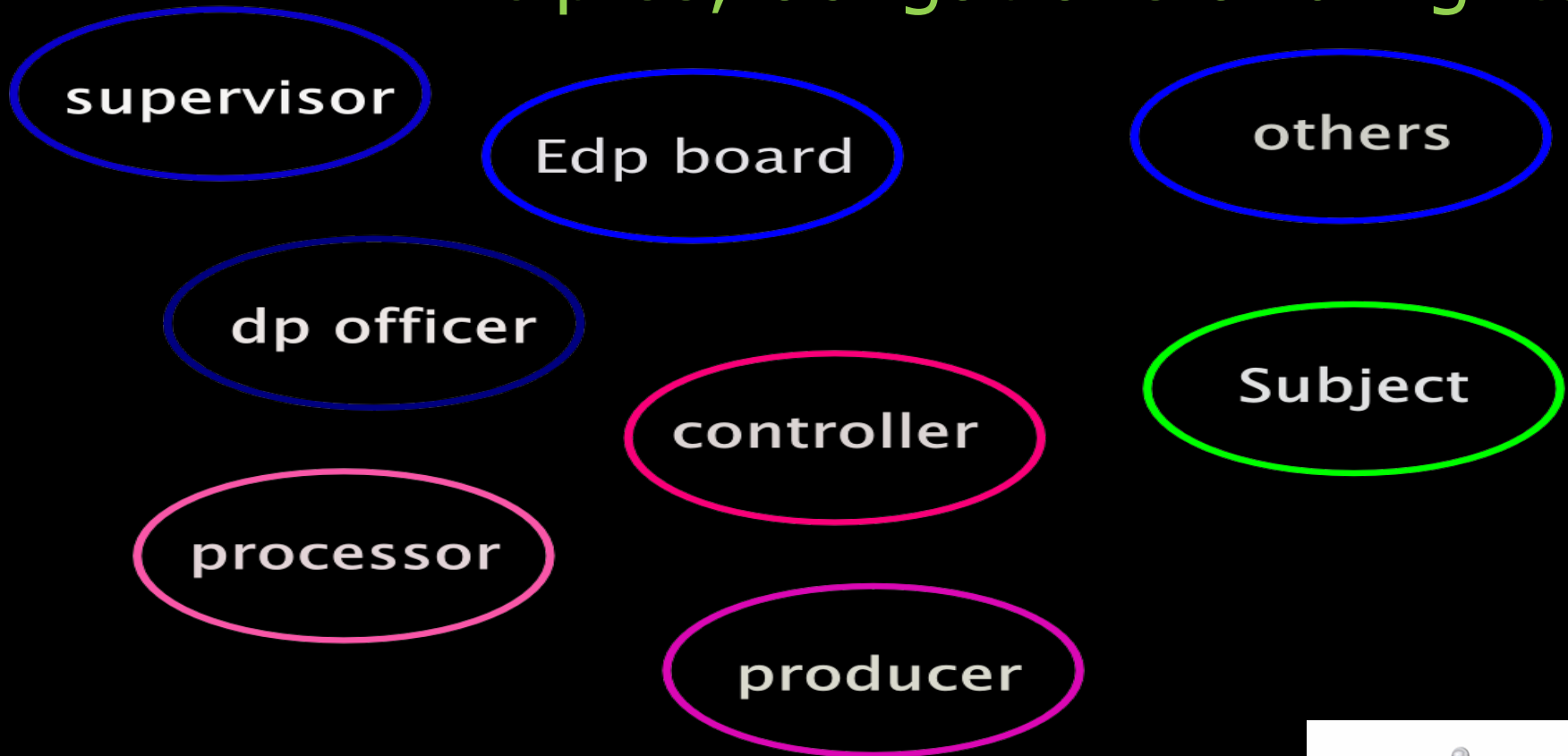
..a danger that the detailed specification of criteria and mechanisms here, effectively in a single 'rule book', could make PBD principles unattractive to (or even unachievable for)

many organisations

Least privacy intrusive/most user friendly way

Procedures & Forms & Rules

Principles, obligations and rights



Friendly privacy preserving and without losing the functionality of the Information Systems/ ICT



Individual vs Organisation

As individuals, we employ privacy in the sense of revealing or withholding information about ourselves, in establishing and defining our relationships with others

Bonner, B. (2012)

The Problem of the 'Problem' of Privacy

Individual vs Collective

Privacy is often viewed as an individual right that must be sacrificed in order to attain other socially desirable, but competing goals.

zero-sum approach

Privacy refers to an individual's ability to exercise personal control over the collection, use and disclosure of one's recorded information

Positive sum approach

Reconciling the Rights

Can we do it?

Do we want to do it?

We must do it !

What is our stake?

Positive sum (win-win)?

Control over security and/or privacy?

Privacy controls impact business goals

Who decides to ensure positive sum?

Food for thought

Google Glass

PRISM

Blagging

According to the Boston Consulting Group, the value of EU citizens' data was €315 billion in 2011. It has the potential to grow to nearly €1 trillion annually in 2020

Privacy is dead, get over it!

But there is the Laws on it!

Final Remark

It is not the existence of laws that is important, it is their interpretation and what is done with them that is important

Bonner, B. (2012)

The Problem of the 'Problem' of Privacy

Thank You

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Have a safe journey home

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