

## Privacy Abroad and At Home

A brief visit to the  
EU Data Protection Directive

1

## OECD Guidelines

Protection of Privacy and Transborder Flows of Personal Data

- Collection Limitation
- Data Quality
- Purpose Specification
- Use Limitation
- Security Safeguards
- Openness
- Individual Participation
- Accountability

2

## Fair Information Practices

- Notice
- Choice
- Access
- Security
- Redress

3

## Fair Information Practices v. OECD

- |                                                                                                                                 |                                                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Notice</li><li>• Choice</li><li>• Access</li><li>• Security</li><li>• Redress</li></ul> | <ul style="list-style-type: none"><li>• Collection Limitation</li><li>• Data Quality</li><li>• Purpose Specification</li><li>• Use Limitation</li><li>• Security Safeguards</li><li>• Openness</li><li>• Individual Participation</li><li>• Accountability</li></ul> |
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4

## European Union Data Protection Directive (1995)

- “Data Protection” = Data Privacy
- “Data Subject” = Person identified directly or indirectly
  - Compare with U.S. understanding of PII
- Harmonization within EU for data processing and transfer
- Implemented in national law by member states

5

## EU Data Protection

- Right of access
- Right to correct inaccurate information
- Right to object
- Right not to be subject to certain automated decisions
- Processing is limited to information relevant and necessary for purposes collected
- Oversight by supervisory authority

6

## What's the purpose of DP?

- Durant describes dual purpose:
  - Protect individuals' fundamental rights of privacy and access to information held by others
  - Promote free movement of data (by harmonizing law)

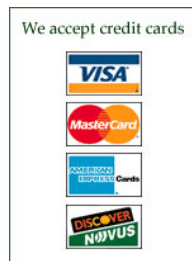
7

## What are DP's limits?

- Durant v. Financial Services Authority
  - What is "personal data"? Biography, focus
  - What type of files? Mechanically accessed, not manually. Technology makes a difference
- Criminal Proceedings against Bodil Lindqvist
  - Personal data? Names, phones, hobbies - yes
  - "Transfer"? No, website is not a transfer
  - Conflict with freedom of expression

8

- Recall Dwyer v. American Express
  - Class action after Amex rented list of cardholder spending habits to marketers
- Would this practice violate EU Directive?



## How would these fare in EU?

- Northwest Airlines turning over information to NASA?
- Pharmtrak collecting clickstream data from website visitors?
- Credit agencies generating FICO scores?

10

## Enforcement

- "Supervisory Authority"
  - Data controllers to notify authority of data processing
  - Private complaint to authority of breach
- Private action for damages
- Should the U.S. have a Privacy Office?

11

## International Transfers

- EU Directive permits transfers of personal data only to non-member countries that have an "adequate level of protection."
- Does baseline U.S. law provide "adequate" protection?

12

## Safe Harbor

- Voluntary agreement by U.S. company that processes EU personal data
- Self-certification to Dep't of Commerce
- Join a self-regulatory program or develop your own policy that meets principles:
- Notice
- Choice
- Onward transfer
- Security
- Data integrity
- Access
- Enforcement

13



- |            |                            |                   |
|------------|----------------------------|-------------------|
| FIP        | OECD                       | Safe Harbor       |
| • Notice   | • Collection Limitation    | • Notice          |
| • Choice   | • Data Quality             | • Choice          |
| • Access   | • Purpose Specification    | • Onward transfer |
| • Security | • Use Limitation           | • Security        |
| • Redress  | • Security Safeguards      | • Data integrity  |
|            | • Openness                 | • Access          |
|            | • Individual Participation | • Enforcement     |
|            | • Accountability           |                   |

15

- Should the U.S. adopt law akin to the EU Privacy Directive implementations?

16

## Information Privacy?

- Are we fighting a war against technology?
- Are law enforcement and national security interests consistent with privacy or in conflict?
- Are market forces in conflict with privacy?

17