

Introduction to Data Protection

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ARTICLE 19



“Right to be Left Alone”

- UK Calcutt Committee - “The right of the individual to be protected against intrusion into his personal life or affairs, or those of his family, by direct physical means or by publication of information.”
- Westin - desire of people to choose freely under what circumstances and to what extent they will expose themselves, their attitude and their behavior to others
- European Ct Human Rights - the right to respect for private life ... comprises also, to a certain degree, the right to establish and develop relationships with other human beings, especially in the emotional field for the development and fulfillment of one’s own personality.

Information Privacy



- Establishes rules governing the collection and handling of personal data
 - credit information
 - medical records
 - government records
 - electronic commerce
- Also known as “fair information practices” & “data protection”

International Standards

Universal Declaration of Human Rights

- “No one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interferences or attacks.”
- Article 12, Universal Declaration of Human Rights

Intl Covenant on Civil and Political Rights

- 1. No one shall be subject to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- 2. Everyone has the right to the protection of the law against such interference or attacks.

■ Article 17

Other International Standards

- UN Guidelines for the Regulation of Computerized Personal Data Files (1990)
 - Adopted by General Assembly resolution 45/95
- OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1981)
- European Convention of Human Rights, § 8
 - (1) Everyone has the right to respect for his private and family life, his home and his correspondence. (2) There shall be no interference by a public authority with the exercise of this right except as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health of morals, or for the protection of the rights and freedoms of others.
- COE Convention 108 + (1981/2019)
- APEC Privacy Framework (2005)

Standards

Fair Information Practices



- Obtain information fairly and lawfully;
- used only for the original specified purpose;
- adequate, relevant and not excessive to purpose;
- accurate and up to date;
- accessible to the subject;
- kept secure; and
- destroyed after its purpose is completed.

Data Protection Framework

- Enforced Code of Information Practices
- Default protection of personal information
 - More protections for “Sensitive Information”
 - health, sexual orientation, trade union, religion
 - Other information less protected
- Rights of persons
- Registration
- Exemptions
- Controls on transborder data flows
- Oversight Body - Commission
 - Data Protection/Privacy Commission
- Sanctions

Recent Additions

- Data Protection Impact Assessments
- Data Breach Notification
- Data Portability
- Right to be Forgotten

Defining Personal Information

- EU Data Protection Directive (1995)/GDPR (2016)
 - 'personal data 'shall mean any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;
- APEC (2005)
 - Personal information means any information about an identified or identifiable individual.
- CIS Model Law (1999)
 - Personal data - information (recorded on a material carrier) about a particular person that is identified or can be identified with him. Personal data include biographical and identification data, personal characteristics, information about family, social status, education, profession, official and financial status, health status and others.

Sensitive Information

- EU & COE- Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life.

Rights of Persons

- Objection
- Correction
- Deletion
- Access and information

Allowing Use of Personal Information

- The data subject has unambiguously given his or her consent,
- for the performance of a contract to which the data subject is a party
- for compliance with a legal obligation
- in order to protect the vital interests of the data subject
- for the performance of a task carried out in the public interest or in the exercise of official authority
- for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed.

Exemptions

- National Security
- Public Health
- Journalistic Purposes
- Archives
- Research
- Personal Use

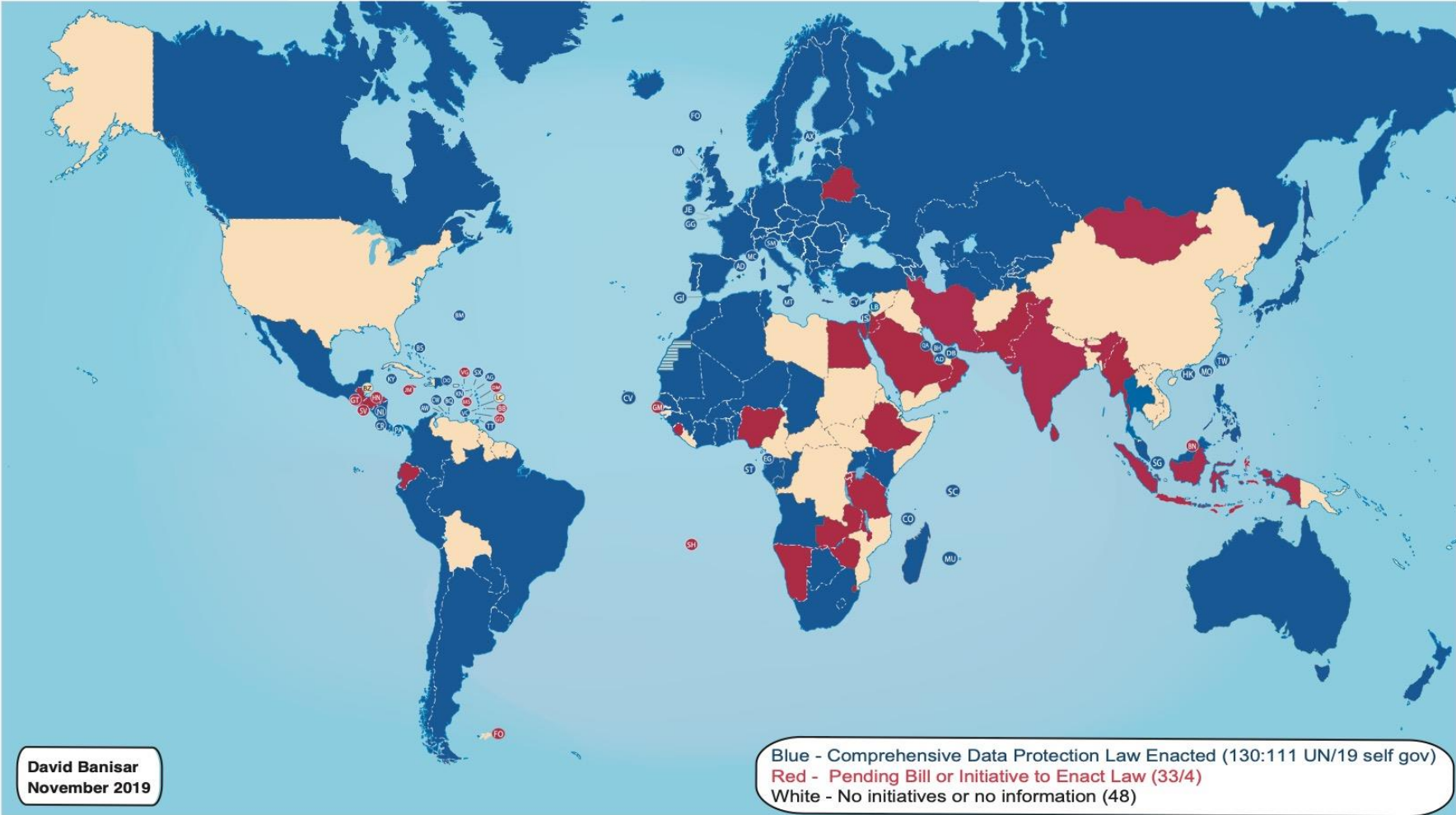
Oversight Bodies

- Independent Body
- Sets Regulations
- Monitors compliance
- Receives and Decides Complaints

National Laws on Data Protection

- ~110 Countries
 - All of Europe & Central Asia, Canada, Australia, NZ, Japan, Korea, Argentina, Brazil, Mauritius, Tunisia, Morocco, Malaysia, Singapore...
- Pending bills/efforts in another 30+ countries
 - India, Indonesia, Pakistan, Iran
- More limited protections
 - China, Viet Nam, Indonesia, Nigeria

National Comprehensive Data Protection/Privacy Laws and Bills 2019



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Privacy and Free Expression



- Complementing human rights
 - Allows individuals (including media) to develop ideas and personal relationships
 - Supports media rights through protecting internal journalism practices, secrecy of confidential sources, limits abuses of wiretapping
 - Supreme Court in Ireland that first recognized privacy in illegal wiretapping of journalists
- Some conflicts
 - “privacy of officials” – widely recognized worldwide that senior officials have less expectation of privacy due to importance in society
 - Privacy of public
 - Journalistic exemption in most data protection acts – “information collected for journalistic or artistic purposes”

Data Protection and Freedom of Expression

- Closely related to right to privacy: regulates the way in which information about individuals is collected, processed, stored and retained electronically by both public and private bodies.
 - Recognised as autonomous right in international law
- Right to be forgotten
- Journalistic Exemption

Right to be Forgotten



- “European right”: *Google Spain* case and GDPR (article 17)
- Individuals have a right to request search engines to de-list links to results generated by a search for their name except when there were public interest considerations
- UN Special Rapporteur FoE: take-down of digital content has same basis for restrictions as FoE (prescribed by law, legitimate aim, necessity and proportionality)
- Right of the public to know: subject play a role in public life, play a role in public life, data accurate, original content published in context of journalistic purposes

Journalistic Exemption

- Most countries around the world that have adopted DP laws with specific exemption for journalistic, academic, artistic, literary and other cultural purposes which allows for the rules limiting processing to be waived
- Applicable beyond official media: to all persons, not just journalists, and material which is in some form journalistic without explicitly being described (for ex. by NGOs)
- Object is the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them

Privacy and FOI



- Complimentary rights
 - “not mutually distinct but form part of the overall information policy in society.” - COE
 - “two forms of protection against the Leviathan state that have the aim of restoring the balance between the citizen and the state” - French Privacy Commissioner
 - “to continue maintaining the non-transparency of citizens in a world that has undergone the information revolution while rendering transparent of the state.” - Hungarian Info Commissioner
 - “The Swiss legislator rightly considered that these apparently contradictory rights were reconcilable and pursued the same objective, to wit, the defence of a democratic society which respects fundamental rights and freedoms.” – Swiss Information and Privacy Commissioner
- 70+ Countries have both laws

Balancing Privacy and FOI

- Defining Privacy
 - Does not apply to internal government decision-making
 - Does not apply to names of officials in meetings, memorandum
 - Govt officials have somewhat less privacy in personal lives
 - Asset disclosures, health of senior officials
- Public has privacy in personal information held by government bodies
 - Found in every FOI law in world
 - Strong privacy for sensitive records
 - Balancing test for others
 - Strong public interest regarding government accountability

Public Interest

- Personally identifiable information can be released if public interest is higher than harm.
 - Enhance scrutiny
 - Effective oversight of expenditures
 - Dangers to public health or safety

Managing conflict

- Ireland, Canada, S. African FOI
 - Personal information - “be known only to the individual or members of the family, or friends, of the individual” or is confidential. 12 paragraphs of examples of personal information including “educational, medical, psychiatric or psychological history”, financial affairs, religion, tax and identification numbers.