data protection & privacy
EU developments

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to STM’s Copyright & Legal Affairs Committee (CLAC)
Data protection – EU developments 2014-2016: a state of limbo until 2018

Key Developments:

- May 2014 European Court of Justice (ECJ), “Gonzalez”, establishes right to be forgotten

- Oct 2015 ECJ in “Shrems” kills US-EU safe harbour

- Oct 2015 ECJ ruled that a company operating a service in the native language of a country with representatives in that country may be held accountable by the country’s national data protection agency despite being headquartered elsewhere

- Dec 2015 EU Commission agrees General Data Protection Regulation (GDPR) reform:
  1. more citizen rights, stiffer fines, broad vendor liability, impact assessments
  2. one-stop-regulation
  3. less red tape for SMEs – December 2015

- 2016 Commission & US working party agree «Data Shield»

- Art. 29 Group criticises Data Shield, opinion from Art. 31 expected April/May 2016
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Key Developments (contd.):

• 2016 GDPR passes EU Parliament, reform Data protection directive for 2018 looks more certain, air passenger information
• 2016 ePrivacy Directive is next, focus on internet data collection, cookies, eg Do Not Track (DNT)
• contradiction of data protection regime & eprivacy regime, eg location information

• Anti-terrorism directive allows mass spying
• Pending ECJ case on GCHQ practices of mass spying
Options other than Data Shield

- express consent
- Binding Corporate Rules
- EU-approved model clause agreements.

Data Shield elements:

- Commitments
- Transparency rules
- Complaint procedures with firm deadlines to respond

- But: scheme is heavily criticised by data watchdogs – provisional only / mid/year should be clearer

CSL Evaluation:
both options are solutions with problems.
preference will depend on varying attributes of entities
EU/US: Data shield or not data shield - what should you do / know about data shield

Upshot:

Already today, publishers doing business in Europe, vendors in Europe and Customers will expect US partners to answer questions on their data privacy policy; questions will increase if Data Shield falls through. E-commerce sites also need to comply on cookies and DNT.

Run-up to 2018, data flow and data collection policy should be ready/comply GDPR. Harmonization likely to increase across EU. EU influence increases.

QUESTIONS, COMMENTS?

THANK YOU!

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