

Introduction to Cyberlaw

handout 4 – privacy and personal data

Brandeis, L. Warren, S. The Right to Privacy, Harvard Law Review, vol. 4(5).

That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the new demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses vi et armis. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life, -- the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession -- intangible, as well as tangible.

Directive 95/46/EC of the European Parliament and of the Council 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

Article 2 Definitions

For the purposes of this Directive:

- (a) '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;
- (b) 'processing of personal data' ('processing') shall mean any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

Article 7

Member States shall provide that personal data may be processed only if:

- (a) the data subject has unambiguously given his consent; or
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject; or
- (d) processing is necessary in order to protect the vital interests of the data subject; or
- (e) processing is necessary for the performance of a task carried out in the public interest or in

the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or

- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1).

Article 8 The processing of special categories of data

1. 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.

Article 25 Principles

1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures an adequate level of protection.
2. The adequacy of the level of protection afforded by a third country shall be assessed in the light of all the circumstances surrounding a data transfer operation or set of data transfer operations; particular consideration shall be

given to the nature of the data, the purpose and duration of the proposed processing operation or operations, the country of origin and country of final destination, the rules of law,

both general and sectoral, in force in the third country in question and the professional rules and security measures which are complied with in that country.

GDPR - Council Proposal, 9565/15

Article 17

Right to erasure and “to be forgotten”

1. The controller shall have the obligation to erase personal data without undue delay, especially in relation to personal data which are collected when the data subject was a child, and the data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay where one of the following grounds applies:

- (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1) or point (a) of Article 9(2) and (...) there is no other legal ground for the processing of the data;
- (c) the data subject objects to the processing of personal data pursuant to Article 19(1) and there are no overriding legitimate grounds for the processing or the data subject objects to the processing of personal data pursuant to Article 19(2);
- (d) the data have been unlawfully processed;
- (e) the data have to be erased for compliance with a legal obligation to which the controller is subject;

1a The data subject shall have also the right to obtain from the controller the erasure of personal data concerning him or her, without undue delay, if the data have been collected in relation to the offering of information society services referred to in Article 8(1).

2a. Where the controller (...) has made the personal data public and is obliged pursuant to paragraph 1 to erase the data, the controller, taking account of available technology and the cost of implementation, shall take (...) reasonable steps, including technical measures, (...) to inform controllers which are processing the data, that the data subject has requested the erasure by such controllers of any links to, or copy or replication of that personal data.

3. Paragraphs 1, 1a and 2a shall not apply to the extent that (...) processing of the personal data is necessary:

- a. for exercising the right of freedom of expression and information ;
- b. for compliance with a legal obligation which requires processing of personal data by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;
- c. for reasons of public interest in the area of public health in accordance with Article 9(2) (h) and (hb) as well as Article 9(4);
- d. for archiving purposes in the public interest or for scientific, statistical and historical (...) purposes in accordance with Article 83;