

Strategic Implications of Data Protection Laws

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1949

[The Parties to this Treaty] are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of **democracy, individual liberty** and the **rule of law**.

Preamble to the North Atlantic Treaty, April 4, 1949



2019

Exclusive: U.S. opens national security investigation into TikTok - sources

Google accused of secretly feeding personal data to advertisers

Police deals with Amazon's Ring under fire over surveillance concerns

Children 'interested in' gambling and alcohol, according to Facebook



Big data + AI = surveillance

- Zuboff (2019): **surveillance capitalism** as business model based on **behavioral surplus** fabricated into **prediction products**
- Potentially intertwined with/enabling **government surveillance**

Key features:

- Agrawal, Gans and Goldfarb (2018): unprecedented **granularity** of predictions at **low cost**
- unprecedented **power asymmetry** between large data collectors (corporations, authorities) and data subjects

Key challenge for liberal democracies



Bringing the digital sphere fully under the **rule of law**, making sure that individuals enjoy the same **rights and freedoms** online and offline.

This is **existential** and needs to happen

(a) on **both sides of the Atlantic**

(b) vis-à-vis corporations **and** governments



The digital rights model

- Pioneered by EU GDPR, then adopted by Canada, Japan, South Korea, Brazil...
- Explicit definition of *rights of natural persons* vis-à-vis any entity collecting data from and on them (boundaries on AI input constrain output too!)
- Six principles for data collection and use: lawfulness, purpose limitation, minimization, storage limitation, accuracy, security
- *Microfounded*: works at the level of *individual pieces of information* and protects them through their life cycle
- *Extraterritorial*: cross-border data transfers subject to adequate protection in receiving jurisdiction



The meaning of privacy

- It is **not** about hiding nefarious deeds!
- Acquisti, Taylor and Wagman (2016): privacy pertains to “the **boundaries** between the self and the others”. It is “not the opposite of sharing - rather, it is **control over sharing**”.
- Control over data footprint = precondition for **freedom** and **autonomy** in digital age



The US stance

- Data protection mostly regulated at state level, mostly weaker compared to EU
- Federal laws only cover **specific types of data** (COPPA, HIPAA etc)
- DR model disliked by lawmakers on economic grounds

 rule of law only **partial**



The national security toolkit

US unwilling to constrain home-grown surveillance capitalists, but concerned with **Chinese** ones (Huawei, CFIUS on Grindr...)

➡ macro-level natsec tools necessary **but** protect individuals only incidentally, do not solve rights problem

➡ new apps are born every day

➡ **this is not just about China!**



US should embrace digital rights

- US companies/academia formidable assets in improving on GDPR
- DR front with US = over 50% of world GDP
 - ➔ either provide adequate data protection or lose market access (e.g. India)
 - ➔ some will choose to keep surveillance state, but will not be able to harvest data / conduct influence operations in DR countries



Thank you!