



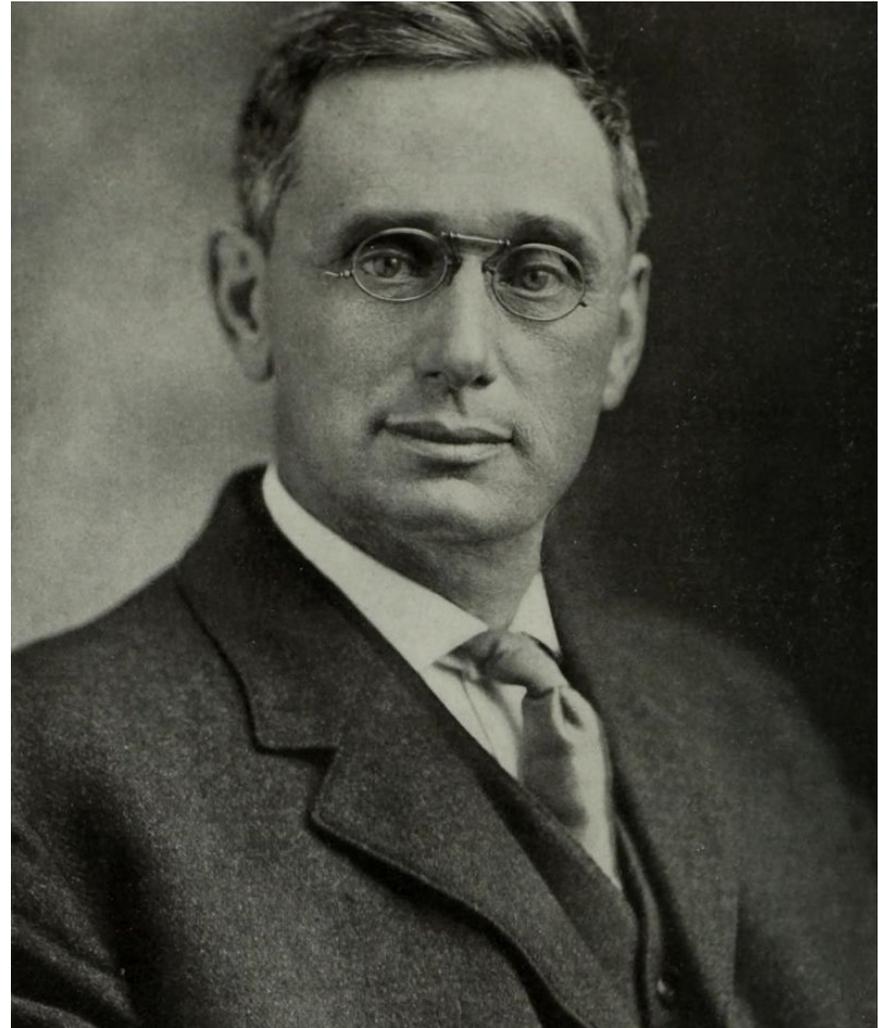
Fundamentals of data protection and the GDPR

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What is privacy?

“The right to be let alone” –
Supreme Court Justice Louis
Brandeis, 1898

“A free and democratic society
requires respect for the
autonomy of individuals, and
limits on the power of both
state and private organisations
to intrude on that autonomy...
Privacy is a key value which
underpins human dignity and
other key values such as
freedom of association and
freedom of speech” –
Australian Privacy Charter



International law

ICCPR §17(1): “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.”

European Charter of Fundamental Rights §7: “Everyone has the right to respect for his or her private and family life, home and communications.”

ECFR §8: “Protection of personal data”

Everyone has the right to the protection of personal data concerning him or her.

Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

Compliance with these rules shall be subject to control by an independent authority.

Market failures in privacy

Negative externalities – sale of personal data without compensation to subject

Information asymmetry – data gathered ubiquitously and invisibly in a way few consumers understand

Privacy policies unreadable and difficult to verify/enforce, with unstable equilibrium. Seals and lemon markets

Information industries are highly concentrated; privacy ignored by competition regulators

Correcting market failure

Minimum standards of care – organisational and technical protections

Simplified privacy policies and breach disclosure reduce information asymmetry

More effective enforcement (group actions?) internalises cost of harms

New focus by privacy regulators on interoperability and defaults?



Young people and privacy

Most young people see Internet as private space for talking to (already-known) friends, and target information to peer group

Lenhart et al. (2007) found stricter access controls on photos/videos by teens than adults (76% v 58% most of time/sometimes)

Teens showed higher privacy concerns with parental monitoring; parental discussions increased privacy concerns and reduced disclosure

Adult users of social media are developing similar behaviours – consequence of mediation, not age (Marwick et al. 2010)



GDPR: Definitions

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1–88

What is personal data? (§4)

Data subject, data controller, data processor (§4)

Data protection officer (§§37-39)

Supervisory authorities: DPA, EDPS (§§51-76)

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GDPR: Key Rights

Consent for collection, use, sharing (§6)

Right of access, data portability (§15, §20)

Right to erasure (§17)

Object to automated decisions (§21)

Breach notification (§§33-34)

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Sanctions and transfers

Fines up to €20m or 4% of global turnover (§83)

Legal basis for transfers outside EEA:

“Adequacy”/“essential equivalence” (§45) - Schrems I

Standard contractual clauses approved by EC or DPA (§46) - Schrems II

Binding Corporate Rules (§47)

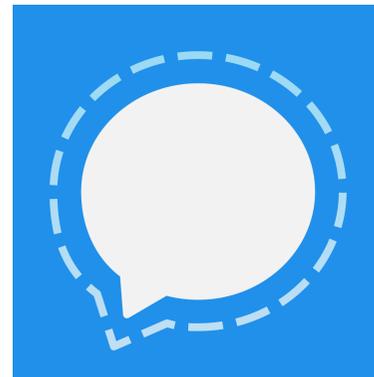
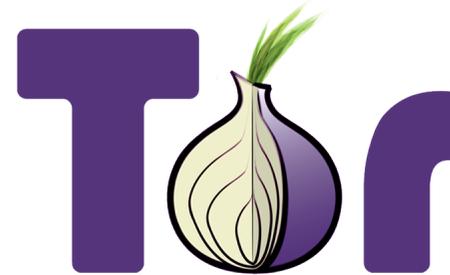
With explicit data subject consent, or to perform a contract with the data subject (§49)



§25: DP by design/default

... implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data-protection principles, such as data minimisation, in an effective manner...

... by default, only personal data which are necessary for each specific purpose of the processing are processed. That obligation applies to the amount of personal data collected, the extent of their processing, the period of their storage and their accessibility...



Further reading

I. Brown (2015) 'The economics of privacy, data protection and surveillance.' In J.M. Bauer and M. Latzer (eds.) *Research Handbook on the Economics of the Internet*. Cheltenham: Edward Elgar

I. Brown, D. Clark and D. Trossen (2010) *Should Specific Values Be Embedded In The Internet Architecture? Re-Architecting the Internet*

I. Brown and C. Marsden (2013) *Regulating Code: Good Governance and Better Regulation in the Information Age*. Cambridge, MA: MIT Press.

D. Korff and I. Brown (2010) *New Challenges to Data Protection*. European Commission DG Freedom, Security and Justice.