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GDPR and New Technology

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The GDPR was designed as legislation for the digital age, is it delivering? This panel will discuss and debate the challenges of aligning the requirements of GDPR compliance with the development and implementation of new technologies. It will also consider the benefits that the GDPR brings to innovation. These positions will be discussed both from a commercial and a regulatory perspective.

GDPR and New Technologies?

- **Modern technologies have not “created” challenges to privacy, but the sheer quantity of data that can now be processed on a worldwide net accessible to everybody magnifies challenges in the protection of fundamental human rights.**

- **As technology advances**
 - Internet of Things
 - Blockchain
 - Biometrics (including Facial and retinal recognition)
 - AI and Machine learning

- **So must privacy**
 - Privacy by Design and privacy by Default
 - Privacy Enhancing Technologies
 - Differential Privacy

- **Where is the balance?**

GDPR: A Help or Hindrance?

- **The GDPR was built for the digital age**
 - Focused on contextual risk
 - Designed to be technology agnostic
 - Focus on transparency, governance and accountability driven by the three P's:
 - People
 - Policies
 - Procedures
 - Bold concepts
 - Extra-territorial application
 - Privacy by Design and Privacy by Default
 - Mandatory DPIAs
- **But does it always work?**
 - Concepts of “controller” and “processor” are blurred in practice
 - Security and international transfers may have led to data localization by default
 - Sector specific challenges of GDPR (e.g., financial services) especially in multi-national business
 - The threat of tough sanctions for non-compliance may stymieing innovation

GDPR is local but the digital economy is global

- **GDPR is only EU law**
- **GDPR has Extra-territorial application**
 - Does it work in practice?
 - How easy is extra-territorial enforcement for regulators?
- **GDPR is now just one of many such laws - Japan, Brazil, China etc.**
 - Practical implications of a framework of extra-territorial laws
 - Does this raise the bar or level the playing field?
- **What should organisations be doing to ensure compliance when innovating?**
 - Focus on compliance with each law or commercial and credible compliance?
 - Focus on adopting consistent privacy principles and medium or high watermarks?

What is the role for new Privacy Enhancing Technologies?

- **Technology allows organizations to process ever-increasing volumes of personal data**
- **GDPR (among others) increases the risk of holding personal data**
 - GDPR fines are over US\$332 million from May 2018 to January 2021
- **The days of “Collect it all” are behind us**
- **“Collect it in compliance ” should be the mantra of the day**
- **PETs enable privacy protection while data processing and sharing**
 - Cryptographic algorithms
 - Data masking techniques
 - Synthetic data
 - Federated learning
- **PETs mitigate risk but are not a single compliance solution**

Takeaways

- GDPR is only one of many laws that may apply.
- GDPR sets a good benchmark but will not provide compliance globally (US has some more restrictive laws e.g., HIPAA).
- Map your data – know what you have where and why.
- Use PIAs, DPIAs and TIAs to ensure you understand and assess all the risks relating to a product or technology.
- Context of types of data & size of datasets as well as use-case will be important in assessing risk.
- Get Ahead of the Ethics Issue - add “should we do this from an ethical POV” to PIAs/DPIAs.
- Compliance is increasingly broader than just organizations perimeter.
- Require Vendors Provide Written Evidence of their GDPR Compliance. Document what that means and what they do to ensure your organization’s decisions doesn’t put your company at risk in the UK/EU.
- Don’t be afraid to work with regulators when innovating.

Questions + Contact



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Reference Materials

- EDPB Strategy 2021-2023
 - https://edpb.europa.eu/our-work-tools/our-documents/work-program/edpb-strategy-2021-2023_en
- Blockchain and the General Data Protection Regulation
 - [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/634445/EPRS_STU\(2019\)634445_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/634445/EPRS_STU(2019)634445_EN.pdf)
- When do we need to do a DPIA?
 - <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/data-protection-impact-assessments-dpias/when-do-we-need-to-do-a-dpia/>
- Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)
 - <https://digital-strategy.ec.europa.eu/en/library/proposal-regulation-laying-down-harmonised-rules-artificial-intelligence-artificial-intelligence>
- Digital technologies as a means of repression and social control
 - [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653636/EXPO_STU\(2021\)653636_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653636/EXPO_STU(2021)653636_EN.pdf)