Managing data transfers and preparing for GDPR

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Topics

• Effective methods for data transfers
• Preparing for the General Data Protection Regulation
• Embedding ethics and trust into privacy practices

Data Transfers

• Safe Harbor
  • EU-US Privacy Shield
  • EU approved third countries
• European Commission Standard Contractual Clauses
• Binding Corporate Rules
• Consent (although precarious to rely on)
• Codes of Conduct (Article 38)
• Certifications / Seals (Article 39)
Theoretically huge fines…

FINES FINES FINES!

When the GDPR comes in

I WILL FINE YOU A TRILLION BAZILLION EUROS

Data Protection – Preparing for GDPR
Data Protection Principles

8 Key principles of DP law

Personal data must be…

- Processed fairly, lawfully and in a transparent manner (lawfulness, fairness and transparency)
- Collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes (purpose limitation)
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimisation)
- Accurate and, where necessary, kept up to date (accuracy)
- Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed (storage limitation)
- In accordance with data subjects' rights (rights of the data subject)
- Processed in a way that ensures appropriate security of the personal data (integrity and confidentiality)

- Not be transferred to a third country or to an international organisation if the provisions of the Regulation are not complied with (transfers)

- More flexibility to rely on 'legitimate interests' as a lawful ground to process personal data where there is a relevant and appropriate connection between the data controller and data subject

- Consent – remains very high standard

- Must be distinguishable from other matters and provided in an intelligible and easily accessible form, using clear and plain language.

- It must be as easy to withdraw consent as it is to give it

Lawfulness of processing, legitimate interests and consent
Data Protection – Preparing for GDPR
Information to be provided to individuals

- Concise, transparent, intelligible and easily accessible form
- Clear plain language
- Iconography

**Keep It Simple, Stupid!**

GDPR Compliance in Practice

- IT Systems
- GDPR Compliance
- Governance
- Accountability Documents
- Touchpoints
- Vendor Contracts

Less than 70 days to go!

GDPR Compliance in Practice – Vendor Contracts

- Controller and processor both responsible for appropriate terms
- No transition period for updated terms. Review, prioritise and amend your existing contracts
  - De-scope as many as you can: (i) expires pre-May (or 6 months post-May), (ii) no processing, (iii) vendor not a processor, (iv) MSA with no live SOWs, (v) large cloud vendors.
- Prioritise: volume/sensitivity of data, business criticality, service portability, duration, location.
- Remember to update templates too for new suppliers
- Send a standard processor addendum out?
GDPR Compliance in Practice – Touchpoints

- All points at which data enters the business
  - Update notices and consent statements
  - Include within training and awareness
- Website: online privacy notice (layers?), cookie notice, marketing consent statements, just-in-time notices, privacy dashboard / preference centre
- Apps: Privacy notice, modal windows, listing on app store
  - Email/Link/footer to privacy notice
  - Hard copy forms, Call centres (Pre-recorded messages, scripts)
  - Don’t forget Employees and Recruitment as well

GDPR Compliance in Practice – Accountability Documents

Art 24(2) GDPR: “Where proportionate in relation to processing activities, the measures referred to in paragraph 1 [i.e. demonstrating compliance] shall include the implementation of appropriate data protection policies by the controller.”

Overarching data privacy policy

<table>
<thead>
<tr>
<th>Consumer Data</th>
<th>HR data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Members</td>
<td>DPO(s)</td>
</tr>
<tr>
<td>DPIAs</td>
<td>Privacy by Design</td>
</tr>
<tr>
<td>Rights</td>
<td>Data Retention</td>
</tr>
<tr>
<td>Breach Reporting</td>
<td></td>
</tr>
</tbody>
</table>

GDPR Compliance in Practice – Governance

- Implementing policies
  - Training (on the policies themselves)
  - DPO(s)
- Other roles/responsibilities
  - DPIAs
- Record keeping (Art 30) (data inventory?)
GDPR Compliance in Practice – IT Systems

- Review, prioritisation, remediation
- Data security: Appropriate to nature/risk of data
- Data minimisation: Remove unnecessary fields
- Deletion/anonymisation: Automated process
- Subject access: Enable search/extraction
- Other individuals rights: Rectification, Erasure, Restriction, Objection, Data portability
- Record of consent
- Withdrawal of consent / Suppression

Sanctions for non-compliance are more than just for data breaches

Sanctions for non-compliance – two levels of fines:

- Up to the greater of 2% annual worldwide turnover of preceding financial year or EUR 10 million – for matters re internal record keeping, data processor contracts, data protection officers, data protection by design and default

- Up to the greater of 4% annual worldwide turnover of preceding financial year or EUR 20 million – for matters re breaching data protection principles, conditions for consent, data subjects’ rights and international data transfers

That dam breach or that damn breach?
Why Ethics and Trust now?

- Compliance with data protection law is mandatory
- Media attention on data breaches
- Consumer awareness of their privacy rights
- Risk of damage to brand and reputation
- Increased enforcements and fines

What now?
Take a deep breath and ask.........

- What personal data do we use?
- Where and how do we process personal data?
- Can we promote our compliance to build brand and trust?
- What personal data do we process and why?

Thank you

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