Beyond GDPR comes what?

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Topics

- GDPR and beyond
- Brexit
- Trade Secrets Directive
- E-Privacy Regulation
- California and other new laws
GDPR Transparency and Accountability

ARE WE DONE YET?

GDPR implementation was just the start…

- GDPR laid the groundwork
- Legacy systems and people
- Anything else?
Beyond GDPR: Data Governance is the ultimate prize!

- Data dictionary
- Data quality
- Centralised decision making and prioritisation
- Single customer view
- Issues and escalation
- Data retention and deletion decisions
- Capabilities are fit for compliance
- Exec level buy-in and accountability

Data Protection

**Data subjects rights**

- Automated decision making / profiling (Art 20)
- Information (Art 14)
- Access (Art 15)
- Object (Art 19)
- Rectification (Art 16)
- Erasure (right to be forgotten) (Art 17)
- Restriction of processing (Art 17a)
- Data portability (Art 18)
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?
GDPR and beyond……

GDPR

Brexit

Trade Secrets Directive

E-Privacy Regulation

California/Brazil/Saudi Arabia/Kenya/India/South Africa/Japan

Brexit: Deal or no deal
Deal or No Deal….or no Brexit??

**Deal by 29 March 2019**
- Transition period from 11pm GMT to 31 Dec 2020
- Most EU law will apply whilst details are worked out

**No deal by 29 March 2019**
- EU law stops applying at 11pm GMT
- UK cannot rely on reciprocity in Brussels Reg on jurisdiction and enforcement of judgments
- UK cannot rely on intra EU data transfers
- UK is out of the single market and customs union and no more mutual recognition of professional qualifications

Data Transfers pre Brexit

- Consent
- Contractual necessity
- Codes of Conduct
- Seals
- BCR
- Privacy Shield
- Adequacy decision
- SCC
- Data Transfers
Brexit and data transfers

Brexit

Adequacy decision

Negotiated arrangement

Third country status
SCC
BCR
ODTA

Other grounds such as consent and legal necessity

Brexit and other data consequences

Brexit

ICO relationship with ART 29 WP

Lead Supervisory Authority

Appointment of Representative

Location of the DPO
2013 Study on Trade Secrets

75% of respondents ranked them as strategically important to:
✓ Growth
✓ Competitiveness
✓ Innovation

Examples are:
➢ Commercial bids and contracts
➢ Contract terms
➢ Customer/supplier lists
➢ Financial data
➢ R&D data
➢ Process know how and technology
➢ Formulae and recipes
➢ Product technology
➢ Marketing data
Directive 2016/943 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

- Harmonises the definition of trade secrets
- Provides civil law rights to stop unlawful use and further disclosure of misappropriated trade secrets
- Right to have products removed from the market that have created using illegally acquired trade secrets
- Right to compensation

A trade secret must be seen by the business as secret

It must be treated as secret by the business

How to protect trade secrets

- Clean desk policy
- Shredding
- Use of NDA’s and Confidentiality Agreements
- Mark materials as CONFIDENTIAL
- Take care when emailing attachments
- Consider risks of disclosing trade secrets in public places
- Manage devices in the workplace
- Train staff to protect trade secrets
Often the biggest threat is ourselves

I changed all my passwords to "incorrect".

So whenever I forget, it will tell me "Your password is incorrect."
Trader boasted about secret deals on WhatsApp

A City investment banker has been fined more than £37,000 for boasting about deals on messaging service WhatsApp.

Christopher Niehaus, 49, was a managing director at Jefferies when he bragged to pals about how he might pocket a bonus big enough to pay off his mortgage.

Investigators found conversations about deals – including one with a rival business – and the boasts. When confronted, Niehaus said he knew the information was confidential and should have known better.

The FCA accepted that no one involved traded any shares based on the inside knowledge and hit Niehaus who, according to his LinkedIn profile, had previously worked at HSBC and Swiss lender UBS, with a £37,198 penalty.
Caught on camera: why Downing Street papers keep getting papped
GDPR and beyond……

[Diagram showing GDPR and related topics such as Brexit, Trade Secrets Directive, E-Privacy Regulation, California/Brazil/Bahrain/Ke nya/India/South Africa/Japan]
Background to the ePrivacy Regulation

- Replaces 2002 ePrivacy Directive (and PECR)
- Applies from 2019?
- Directly applicable in all EU member states
- Theoretically greater harmonisation
- Lex specialis to the GDPR
- Specific rules regarding e-marketing + cookies
- “Consent” is aligned to the GDPR
- Heavily lobbied / highly contentious
- Fines aligned to GDPR (up to €20m / 4% turnover)

GDPR and beyond……
Thank you

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