

ITU KALEIDOSCOPE
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The GDPR Transfer Regime and Modern Technologies

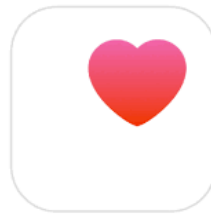
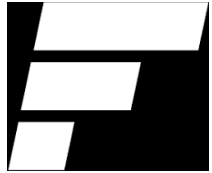
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4-6 December
Atlanta, Georgia, USA



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Health



HEADSPACE®



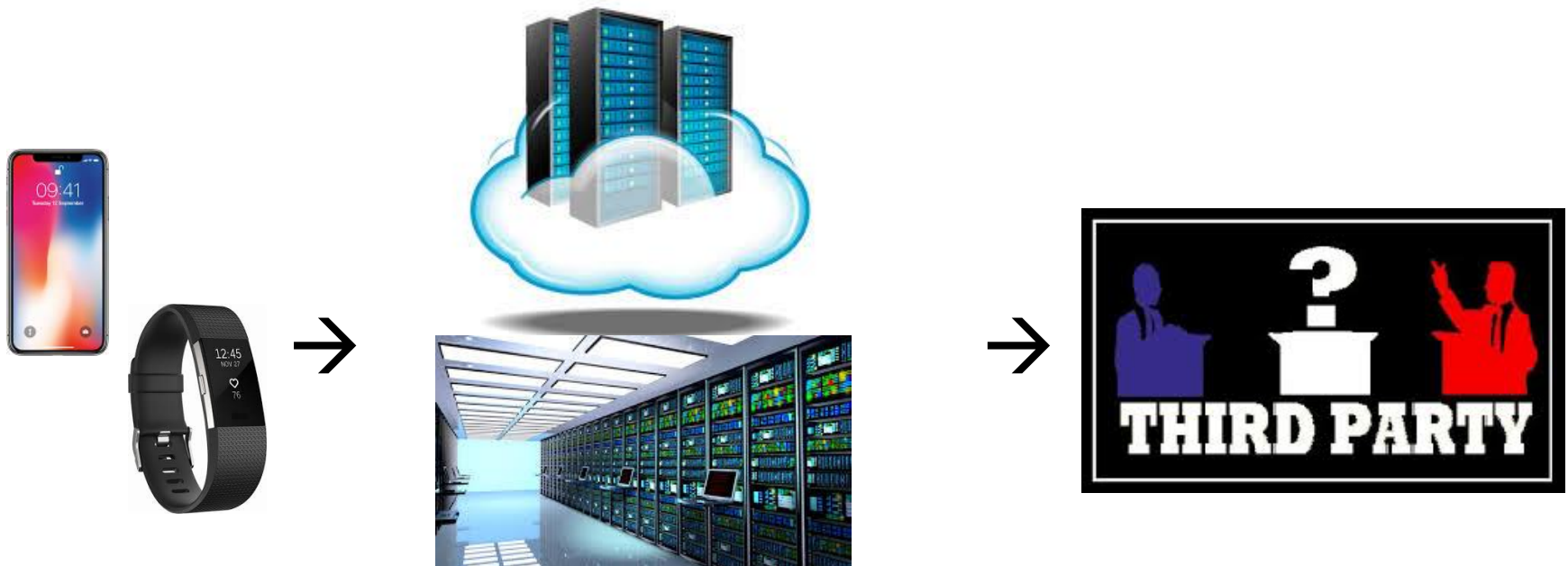
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Deep inside of the problem

- Health data processed by companies who are not under the obligation of medical confidentiality;
- Unauthorized disclosure may lead to various forms of discrimination and violation of fundamental rights;
- Lack of awareness;
- Does the complexity of the GDPR legal framework offer sufficient protection?

Focus of the paper/presentation: transfer and modern technologies



What is health data?

- 'Data concerning health' (Article 4 (15) of the GDPR):

Personal data related to the physical or mental health of a natural person, including the provision of healthcare services which reveal information about health status

Legal basis for processing health data by modern technologies

- Article 9 GDPR;
 - Explicit consent given by the data subject.
 - Dilemma: people do not read privacy policies
 - Dilemma: companies are not transparent about processing activities
- ergo lack of legal basis??

Collection of data

- Via an app/wearable and stored on the device itself until the user actively chooses to send the data to a cloud or server;
- Via an app/wearable and stored on a (cloud) server → the data exists outside of the app and is accessible to the developer, i.e. the device is used as a tool to collect data, the data can be seen separately from the app.

The notion of transfer

- Chapter V GDPR, no definition provided;
- Literature: “to occur as a part of networked series of processes made to deliver a business result”;
- Natural meaning: moving of data (“automatically or intentionally sending or accessing information”) → not straight forward (technical of the operations carried out is relevant);
- Convention 108: Transfer (disclosure or making data available to a recipient) across borders by whatever medium, taking into account the way of transport.

Modern technologies: transfer or transit?

- Data subjects do not actively transfer data to controllers (companies), the data exists outside the app;
 - Transit through EU territory in order to ensure that communications is reached in third countries?
 - The device on which the app is installed is a mere tool for companies to collect data, which does not exist on the device, but on a (cloud) server owned by the company, which can be located anywhere in the world (like streaming videos).
- Answer is unclear, more research required.

Does the complexity of the GDPR legal framework sufficiently reflect reality and protect health data processed by modern technologies?

- Gap between the GDPR and practical reality
 - Lack of transparency
 - Lack of awareness
- Chapter V GDPR (on transfer) does not apply?
- Is explicit consent given by the data subject enough?

Conclusions

- Commercial companies process health data on the legal basis of consent;
- Data are collected by apps/wearables, devices (smartphones/wearables) function as tools to collect the data;
- The data exists outside of the app/wearable where it is accessible to the companies;
- 'Sending' data from the device to the server of the company = transit → application of Chapter V GDPR questionable;
- Consent is not enough;
- A stricter approach required?

→ Further research and discussion required

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Thank you