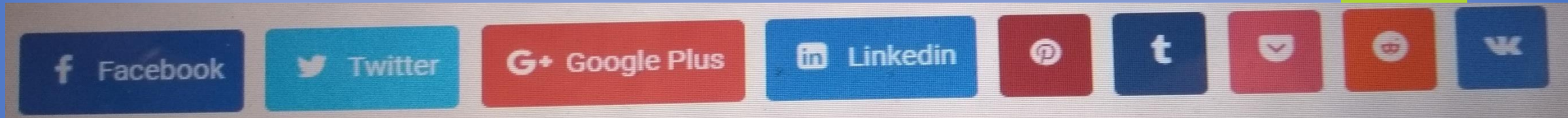


# Keeping it personal:



Data privacy protections globally and under European law

dr ilise L feitshans

jd and ScM and dir





# GLOBAL HEALTH IMPACTS OF NANOTECHNOLOGY LAW

*A Tool for Stakeholder Engagement*

Ilise Feitshans



# FIRST GDPR FINE ARRIVES AND IT IS BIG AGAINST A MAJOR EMPLOYER

GDPR penalties take off as British Airways faces a £183.39 million fine

By Stuart Lauchlan July 8, 2019

There's been a question around for some time now about who will be first 'big' recipient of a hefty GDPR fine. And the answer as of this morning is British Airways (BA), which is looking at a £183.39 million penalty following a cyber-attack last year. The fine relates to a data breach last summer when user traffic to the BA website was diverted to a fraudulent site. Personal data belonging to around 500,000 customers was compromised. The attack, by the cyber-criminal group Magecart, is believed to have taken place in June last year, with the incident disclosed in September.

**While the breach was caused by a third party, BA's security practices are culpable. The ICO says in a statement:** The ICO's investigation has found that a variety of information was compromised by poor security arrangements at the company, including log in, payment card, and travel booking details as well name and address information. Information Commissioner Elizabeth Denham adds: People's personal data is just that – personal. When an organisation fails to protect it from loss, damage or theft it is more than an inconvenience. That's why the law is clear – when you are entrusted with personal data you must look after it. Those that don't will face scrutiny from my office to check they have taken appropriate steps to protect fundamental privacy rights.

This is the largest GDPR fine to date, but BA has actually got off lightly. Organizations can be penalised up to 4% of the company's global annual turnover of the previous financial year.



# objectives

1 Discuss GDPR

2 Discuss other laws

3 WHAT IS Privacy anyway

Small preliminary conclusions

# WHO Cares ABOUT GDPR??

GDPR addresses management of personal data

**Lawfulness, fairness, and transparency:** personal data should be processed in a lawful, fair and transparent manner

**Limited purpose:** personal data should be collected for specified, explicit and legitimate purposes and not further processed in a way not compatible with those purposes

**Data minimization:** the collection of personal data should be limited and data collected to accomplish a specific purpose

**Accuracy:** personal data stored and managed should be accurate and, where necessary, kept up to date

# Confidentiality and integrity:

Who owns data

Where does data go

What happens when it gets there

What if the data is wrong

What if the data is used for automatic  
decisions

What if there is a breach?



## *WHO Cares ABOUT GDPR??*

**Confidentiality and integrity:** personal data should be processed in a manner that ensures appropriate security, including protection against unauthorized or unlawful processing and accidental loss, destruction or damage, using appropriate technical or organizational measures

# GDPR addresses management of personal data:

- **DOES NOT DEFINE PRIVACY**

- **Lawfulness, fairness, and transparency:**
- **Limited purpose:** personal data should be collected for specified, explicit and legitimate purposes
- **Data minimization:** the collection of personal data should be limited and data collected
- **Accuracy:** personal data stored and managed should be accurate and, where necessary, kept up to date
- **Confidentiality and integrity**
- **Right to be forgotten**
- **Right to be excluded with attendant impacts on the quality of empirical research**
  - **EXCLUDES HOUSEHOLD USE !**



## Rationale.....*A BALANCING ACT UNDER LAW*

The Internet has made the access and exchange of information – including personal data – easier and faster than ever. Individuals are providing their personal data online, knowingly and sometimes unknowingly for many different purposes, such as *purchasing goods* and services, playing, *e-learning* or paying **taxes**.

Social interactions are also increasingly taking place over the net – for example in social platforms, creating new opportunities, but also risks to privacy. The frontierless nature of the Internet, which *enables the free flow of data across countries*, also brings new challenges.

# *What information do individuals receive when providing personal data?*

When you provide your personal data, you must receive:

- the **name** of the company or organisation that is processing your data (including the contact details of the DPO);
  - the **purposes** for which the company/organisation will use your data;
  - the categories of personal data concerned;
  - the legal basis for processing your personal data;
  - the **length of time** for which your data will be stored;
  - other companies/organisations** that will receive your data;
  - whether data will be **transferred outside the EU**;
  - your **basic rights** in the field of data protection (for example, the right to access and transfer data or have it removed);
  - the **right to lodge a complaint** with a [Data Protection Authority](#) (DPA);
  - the **right to withdraw your consent** at any time;
  - the existence of [automated decision-making](#) and the logic involved, including the consequences thereof.
- The information should be presented in a **concise, transparent, intelligible way** and drafted in **clear and plain language**.

## **References**

[Articles 12 and 13 and Recitals \(60\) to \(62\) of the GDPR](#)

[EDPB Guidelines on transparency under Regulation \(EU\) 2016/679](#)

**LINK IN THE CHAIN OF CUSTODY..**  
**ONE BREAK IN THE LINK AND CONFIDENTIALITY IS BROKEN**  
**OUT**

**INCOMING DATA**

When you get data

You get liability

**MUST HAVE CONSENT**

Clearly describe...

purpose

Use

Time limit



**AFTER YOU GET IT**

**When you send data  
it must be encrypted  
sent to the correct place  
tracking  
notify the individual  
individual must consent  
individual has the  
right to withdraw consent  
not clear that consent can be  
global  
for a series of uses !**

# Access personal data held by a company..

Individual **right to access that data**,

be **provided with a copy** and get any **relevant additional information**

**reason** for processing your personal data, the categories of personal data used, etc.).

Right of access should be **easy** and be made possible at reasonable intervals. The company/organisation should provide a copy of your personal data **free of charge**. further copies may be subject to a reasonable fee.

the information should be provided in a commonly used electronic form.

This right is **not absolute**: the use of the right to access your personal data should not affect the rights and freedoms of others, including trade secrets or intellectual property.

## **Examples... Right to access**

You borrow books from a library. The library provides the personal data which concerns you that they hold. The library should then provide you with all information about you that is stored by them. For example, when you first started using the library services, which books you have borrowed; whether you have ever had any book overdue and fines you might have incurred. A loyalty card scheme of a supermarket chain located in different parts of the city and throughout the country. If you use your right to ask for information about and obtain your personal information stored by the loyalty card scheme, you should receive information about, for example, how often you used the card, at which supermarkets you did your shopping, any discounts you were awarded and whether you were targeted through the use of profiling techniques, and in which way, whether the supermarket, which is part of a multinational chain of companies, has disclosed your data to its sister company selling perfumes and cosmetics.

## **Reference**

[Article 15 and Recitals 63, 64 of the GDPR](#)

# My data is incorrect, can I correct it?

If you believe that your personal data might be incorrect, incomplete or inaccurate you can ask the company or organisation to correct your data. They must do so without undue delay (in principle within 1 month) or justify in writing why the request cannot be accepted.

## Example

A credit bureau processes information provided by your former landlord whereby it is stated that you owe him 3 months' rent. You have just won a legal dispute and his claim for the 3 months' rent was ruled to be unfounded. You may ask the credit bureau to correct the data it holds about you so that you aren't put at a disadvantage in the future when credit requests are processed.

References Articles 12 16 19 and 23

How is this possible?  
Statutory scheme of  
GDPR  
IS 88 PAGES

**EVERY**

**covered entity has a  
comptroller of data**

**Pseudonymisation**

**Segmented consent**

**Data controller has a CODE  
of ETHICs to be developed**

**And oversight commissions**

**WHO is a covered entity?**

**Preamble section 22**

**Any entity:**

**Government**

**Private sector**

**+++REGARDLESS WHETHER THE  
PROCESSING ITSELF TAKES PLACE  
WITHIN THE UNION (!)**

# *ETHICAL challenges FOR information professionals!!*

Markkula Center ...The Ethics of Online Privacy Protection -

<https://www.scu.edu/ethics/privacy/the-ethics-of-online-privacy-protection>

"When it comes to privacy and accountability, people always demand the former for themselves and the latter for everyone else." -- principles of privacy and data protection must be balanced against additional societal values such as public health, national security and law enforcement, environmental protection, and economic efficiency."

TECHNOLOGY AS A THREAT TO PRIVACY: Ethical Challenges

[web.simmons.edu/~chen/nit/NIT'96/96-025-Britz.html](http://web.simmons.edu/~chen/nit/NIT'96/96-025-Britz.html)

Ethical questions related to the right to privacy of the individual threatened by the use of technology

## 2018 reform of EU data protection rules

Stronger rules on data protection mean people have more control over their personal data and businesses benefit from a level playing field.

Application of the GDPR obligations, individuals' requests, enforcement

- [Rights for citizens](#) TO STOP THE FLOW OF THEIR INFORMATION
- [Rights for citizens](#) TO REDRESS FOR DATA BREACH
- Protection of your personal data, your rights and redress
- **About the regulation and data protection... surveillance by the Supervisory Authority for Data Protection in every EU nation**
- **CERTIFICATION FOR DATA PROFESSIONALS**



# Can I claim compensation?

Sure! **REMEDIES!**

You can claim compensation if a company or organization hasn't respected the data protection law and you've suffered material damages (for example financial loss) or non-material damages (for example distress or loss of reputation). You can make a claim to the company or organization concerned or before the national courts. You can claim compensation before the courts of the EU Member State where the controller or processor is established. Alternatively, such proceedings may be brought before the courts of the EU Member State of your habitual residence.

# SOUNDS COMPLICATED

BECAUSE IT IS COMPLICATED

THE FIRST SENTENCE OF GDPR PROCLAIMS

PRIVACY IS A FUNDAMENTAL RIGHT OF FREEDOM

AND yet the benefits of the trade off are great

AND the trade offs individuals make happen constantly every day as a part of normal daily life

## What liability after GDPR Breach?

**Example** You place an order on a website. The site suffers a cyber-attack because it doesn't have adequate security. Your credit card details have been put on another website and used to buy items you never ordered. You can claim compensation from the website for the financial damage as they have breached the data protection law by not providing adequate security when processing data.

**Read Article 82... what does this mean for British Airways of the fines are imposed (even if reduced)?**

**\*\*\*\*\*Liability to individuals**

**\*\*\*\*\*Possible liability to the third parties who obtained data**

**(((((((Impacts subsidiaries and sub contractors))))))**

# Can I ask a company/organisation to send me my personal data so that I can use it somewhere else?

If a company is processing your personal data on the basis of your consent or a contract, you can ask the company to transfer your personal data to you.

You can also ask for your personal data to be transferred directly to another company whose services you would like to use, when it's technically feasible.

## **Example**

You are a member of an online social media network. You decide that a new rival social media network is better suited to your aims and age-group. You can ask your current online social media network to transfer your personal data, including your photos, to the new social media network.

## **References**

[Article 20 and Recital \(68\) of the GDPR](#)

[EDPB Guidelines on the right to data portability](#)

# Can I ask a company/organisation to stop processing my personal data?

the **right to object** to the processing of your personal data and ask a company/organisation to stop processing your personal data if it is being processed for the purpose of:

**direct marketing;** **scientific/historical research and statistics;** their own **legitimate interest** or in carrying out a task in the **public interest**/for an official authority.

If you object to direct marketing, the company must stop using your personal data and comply with your request without asking for a fee.


A company/organisation can continue to process your personal data, despite your objections, if:

scientific/historical research and statistics, reasons of public interest;  
in the case of processing based on legitimate interests or on the performance of a task in the public interest/exercise of official authority, they can prove that they have compelling legitimate grounds that override your interests, rights and freedoms. Therefore, a balancing exercise is required. BUT

The company should inform you of your right to object when they first make contact with you.

## **Example**

You bought two tickets to see your favorite band play live through an online ticketing company. Afterwards, you are bombarded with adverts for concerts and events that you're not interested in. You inform the online ticketing service company that you don't want to receive further advertising material. The company should stop processing your personal data for direct marketing and, shortly afterwards, you should no longer receive emails from them. They shouldn't charge you for this. **References** [Articles 7, 12 and 21 and Recitals \(69\) and \(70\) of the GDPR](#)



Not merely data breach  
possible fines FOR  
processing personal data without  
consent  
failure of pseudonymization  
transfer of data without consent  
failure to respond to request for  
tracking  
failure to stop use when consent is  
withdrawn

*But mommy where do fines come from?*

*Supervisory authority EU AND each nation*

*comparable to a tax system//*

*validity unchallenged*

*infrastructure by statute*

*create codes of conduct*

*certify data security officers*

# European Legislation (EU)

27 countries



Collective will

Political will

Legislature exercises power



## Does Europe speak with one voice?

- Yes twice !!
  - European Union
  - Council of Europe

## Does Europe speak with one voice?

- Yes twice !!
  - European Union
  - Council of Europe

Few people know it, but Europe speaks with two voices.

There is the European Union, which has messy questions of jurisdiction about who is European, which countries and whether THEY ARE European for the purposes of the laws compared to Members of the Council of Europe.

Also there is the Council of Europe: 47 nations, 800 million constituents, and treaty law that requires the nations to respect scientific precautionary principles in their laws. The Council of Europe

# Council of Europe (COE)

47 countries



- The Council of Ministers
- The Parliamentary Assembly
- The Congress
- The Conference of International NGOs
- The European Court of Human Rights

law

-- Court **Role protecting consumer health**

-- Reports and investigations

oversight for medical care

consumer rights

Genetically modified food

Can hear complaints against governments

## Personal Data Protection Convention

In 1981 the Council of Europe adopted the first international treaty to address the right of individuals to the protection of their personal data: *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, known as "Convention 108".

The treaty was drafted in a technologically neutral style, which enables its provisions to be fully valid today, regardless of technological developments.

To ensure that its data protection principles are still adapted to new tools and new practices, the text was updated in 2018.

To this day, COE Convention 108 remains the only legally binding international instrument with a worldwide scope of application, open to any country, and with the potential to become a global standard.

The treaty establishes a number of principles for states to transpose into their domestic legislation to ensure that data is collected and processed fairly and through procedures established by law, for a specific purpose, that it is stored for no longer than is required for this purpose, and that individuals have a right to have access to,



- *We provide standard-setting, monitoring and co-operation activities on media, Internet governance as well as on action against crime.*



**In 2013 the Committee of Ministers adopted**  
[Declaration on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies.](#)

- protection of human rights with regard to social networking services (2013);
- protection of human rights with regard to search engines (2013);
- profiling (2010);
- on the protection of personal data collected and processed for insurance purposes (2002)
- privacy on the Internet (1999);
- personal data collected and processed for statistical purposes (1997);
- medical and genetic data (1997);
- personal data in the area of telecommunication services, telephone in particular (1995)
- communication to third parties of personal data held by public bodies (1991);
- payments and other related operations (1990);
- data used for employment purposes (1989)
- police files (1987);
- social security (1986);
- direct marketing (1985);
- scientific research and analysis (1983);
- automated medical data banks (1981).



An additional protocol requires each party to establish an independent authority to ensure compliance with data protection principles, and lays down rules on trans-border data flows.

More than **50 countries** have ratified Convention 108 and many others have used it as a model for new data protection legislation. The Council of Europe is encouraging non-European states with adequate data protection legislation to apply for accession to Convention 108.

In addition, the COUNCIL OF EUROPE has adopted a number of recommendations aimed at applying the general principles set out in the convention to the specific requirements of various areas of society:

- on the processing of personal data in the context of employment

- ***WHAT HAPPENS WHEN THERE IS A CONFLICT BETWEEN GDPR AND THESE EUROPEAN LAWS***



- First ever Africa Data Protection and Privacy Conference in Accra 2019 gathering the African Data Protection Network as well as representatives of African countries which do not yet have data protection laws and/or authorities. The open part of the Conference enabled hundreds of participants to address a broad variety of questions during the series of thematic workshops as “a conference in Africa, by the African authorities, focused on Africa”.

December 2018 AU meeting included the big data challenge, storage and fraudulent use of internet data, international cooperation, the applicability of GDPR in Africa, the African strategy on Artificial Intelligence and the adoption of a common African approach to the cross border transfer of personal data.

# African Data Protection

- **Data Privacy & Protection Conference**

- The Network of African Data Protection Authorities and Ghana Data Protection Commission are pleased to announce the Africa Data Protection and Privacy Conference, June 2019 Accra, Ghana

providing a critical platform for promoting Africa's drive for Data Protection and Privacy laws in Africa.

- *Countries across the African Region enacting Data Protection and Privacy laws and establishing Supervisory Authorities in response to the increased use of technology, the pace of digitization and exponential growth in global cyber space.*
- **15 out of 54** countries in the region have passed a Data Protection Law and since the adoption of the **African Union's Malabo Convention on Cyber Security and Personal Data in July 2014** 4 African Nations have ratified the Convention.

# sooo what is privacy anyway? What is privacy.. As a concept under law?

- Privacy as Control of Information Privacy is frequently defined in terms of control of information. For example, Charles Fried (1984) states: “*Privacy is not simply an absence of information about us in the minds of others, rather it is the control we have over information about ourselves*” (p. 209).
- Alan Westin (1967) says that privacy is *the claim that individuals and groups determine for themselves when, how, and to what extent information about them is communicated to others.*
- Elizabeth Beardsley (1971) suggests that *persons have the right to decide when and how much information about themselves will be revealed to others*

Why do we struggle to define privacy?

A fundamental right under European Law of both  
EU

And

Council of Europe

A right under several Constitutions

***NOT A RIGHT UNDER USA LAW***

***USA HIPAA since 1996 requires in house encryption and a security and privacy officer for insurance carriers***

***some states protect privacy by statute***

***few notions of privacy at the federal level***

***mostly in abortion law***

***regarding the fiction of a womans privacy for abortion decisions***

***Some privacy law about contraception***

***among married people but these are health questions!***

# LAW REVIEW.

VOL. IV.

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NO. 5.

## THE RIGHT TO PRIVACY.

“ It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage.”

WILLES, J., in *Millar v. Taylor*, 4 Burr. 2303, 2312.

**T**HAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses *vi et armis*. Then the “right to life” served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man’s spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,—the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term “property” has grown to comprise every form of possession — intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in

as works of literature and art,<sup>1</sup> goodwill,<sup>2</sup> trade secrets, and trade-marks.<sup>3</sup>

This development of the law was inevitable. The intense intellectual and emotional life, and the heightening of sensations which came with the advance of civilization, made it clear to men that only a part of the pain, pleasure, and profit of life lay in physical things. Thoughts, emotions, and sensations demanded legal recognition, and the beautiful capacity for growth which characterizes the common law enabled the judges to afford the requisite protection, without the interposition of the legislature.

Recent inventions and business methods call attention to the next step which must be taken for the protection of the person, and for securing to the individual what Judge Cooley calls the right "to be let alone."<sup>4</sup> Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that "what is whispered in the closet shall be proclaimed from the house-tops." For years there has been a feeling that the law must afford some remedy for the unauthorized circulation of portraits of private persons;<sup>5</sup> and the evil of the invasion of privacy by the newspapers, long keenly felt, has been but recently discussed by an able writer.<sup>6</sup> The alleged facts of a somewhat notorious case brought before an inferior tribunal in New York a few months ago,<sup>7</sup> directly involved the consideration

<sup>1</sup> Copyright appears to have been first recognized as a species of private property in England in 1558. Drone on Copyright, 54, 61.

<sup>2</sup> Gibblett v. Read, 9 Mod. 459 (1743), is probably the first recognition of goodwill as property.

<sup>3</sup> Hogg v. Kirby, 8 Ves. 215 (1803). As late as 1742 Lord Hardwicke refused to treat a trade-mark as property for infringement upon which an injunction could be granted. Blanchard v. Hill, 2 Atk. 484.

<sup>4</sup> Cooley on Torts, 2d ed., p. 29.

<sup>5</sup> 8 Amer. Law Reg. N. S. 1 (1869); 12 Wash. Law Rep. 353 (1884); 24 Sol. J. & Rep. 4 (1879).

<sup>6</sup> Scribner's Magazine, July, 1890. "The Rights of the Citizen: To his Reputation," by E. L. Godkin, Esq., pp. 65, 67.

<sup>7</sup> Marion Manola v. Stevens & Myers, N. Y. Supreme Court, "New York Times" of June 15, 18, 21, 1890. There the complainant alleged that while she was playing in the Broadway Theatre, in a rôle which required her appearance in tights, she was, by means of a flash light, photographed surreptitiously and without her consent, from one of the boxes by defendant Stevens, the manager of the "Castle in the Air" company, and defendant Myers, a photographer, and prayed that the defendants might be restrained from making use of the photograph taken. A preliminary injunction issued *ex parte*, and a time was set for argument of the motion that the injunction should be made permanent, but no one then appeared in opposition.



# RELEVANT TO MACHINE AGE... PRIVACY RIGHTS ARE INTRINSICALLY RELATED TO BEING HUMAN!

## PRIVACY AND AUTONOMY<sup>†</sup>

LOUIS HENKIN\*

Governments, and students of government, frequently confront "private rights" with the "public good," implying tension between them that requires choice or accommodation. That implication might well be modified by a footnote that:

- the promotion, protection, and enjoyment of private rights are also a public good;
- often the public good is an accommodation or choice between private rights, as when a society decides whether someone has the right to publish about me what I assert a right to suppress;
- the public good may be seen as the sum of private goods to which the individual has a right; for example, some have asserted the right to live in a secure, healthful, attractive environment, or in a world at peace.

That the tension is often, perhaps always, essentially between two or more private rights, or between two or more public goods, helps explain the accommodations and the choices which good societies make, and helps render difficult resolutions acceptable.

In the United States, all know, the tension between private right and public good has constitutional dimensions. In some respects, and in some measure, the Constitution itself prescribes the resolution of that tension, at least in principle, as when it denies Congress the power to abridge freedom of speech, presumably even for many a public good. In most respects, and in larger measure, the Constitution does not prescribe precisely, but sets limits to the choices and accommodations permitted to government.

"Limited government" has been our political hallmark since before our birth as a nation, although the monitoring of the limits on government, by a judiciary brandishing and manipulating the United States Constitution, did not become effective until after the Civil War (and in important respects until our century). The principles of permissible accommodation between private right and public good, while based in hallowed scripture, have continued to change, as new generations of Justices faced new issues, thrown up by assertions of new public goods or new private rights, or even by old tensions reappearing in new times or new guises.

In our day the Justices have newly recognized the "right of privacy." I think that denomination is misleading, if not mistaken. To date, at least, the right has brought little new protection for what most of us think of as

<sup>†</sup> This is a revised and annotated version of a paper presented on September 27, 1974, at a Conference on "Private Rights and the Public Good," one of the Conferences on the Humanities and Public Policy Issues at Columbia University.

\* Hamilton Fish Professor of International Law and Diplomacy, Columbia University. A.B. 1937, Yeshiva College; LL.B. 1940, Harvard.



***HOW?***

***HOW DO WE CREATE A COMPLIANCE  
STRUCTURE  
THAT TRIES  
TO OBEY GDPR***

# Review

***GDPR applies not only to all organizations established in the EU that handles personal data but also to any non-EU established organization that processes personal data of individuals who are in the EU in order to: a. Offer them goods or services, irrespective of whether a payment is required; b. Monitor their behavior within the EU.***

***protects personal data at all stages of data processing***

***A data controller is an entity that determines the purposes, conditions, and means of the processing of personal data. For example, educational and research private and public institutions, healthcare services, or any business that manages the personal data of their employees and customers***

***Will it work?***

***Will it protect privacy ?***

***Will it solve a rapidly morphing problem?***

***Will it be enforced?***

# Due diligence includes

- Documented system
- Cyclical on going audits
- Cyclical ongoing communication.. “no worry”
- Survey of the legal landscape
  - Related laws in your home jurisdiction
  - Parallel laws in related jurisdictions.. Shippers, suppliers... consumers
  - GLOBAL AWARENESS (GHS, best practices)

# DUE DILIGENCE IS YOUR BEST FRIEND

Abstract concept crafted from several legal principles

Found across the globe in national and international laws

SHOW YOU TRIED TO DO THE RIGHT THING

SHOW YOU DID IT RIGHT

REASONABLENESS OF ACTIONS IS THE GOLD STANDARD

# Due diligence: the fundamental concept for crafting and implementing effective in-house management systems for occupational health compliance

The ability to prove that such efforts exist on a systematic basis throughout the employer's company, the so-called "paper trail" is dependent entirely upon proving this concept of "due diligence".

Ilise L. Feitshans, *Bringing Health to Work* (Emalyn Press, 1997).

# More stuff to do!

controls over contractors and distributors (to ensure they don't violate laws)

an effective consumer complaint system

effective reporting systems by two streams (audits from above complaints from below)

hotlines

in-house enforcement, including disciplining of those responsible for breaches and rewarding whistleblowers

internal reviews ... cyclical with feedback

## Embedding compliance

written policies

by in house counsel

in consultation with regulators

\*\*\*tailored to the needs of each unit

feedback from end-users, suppliers and in house staff

mechanism for flow of information on a regular cycle– Anticipate  
pROblems

regular training\*\*\* REGULAR FEEDBACK \*\*AVOIDS Crisis mode



*WARNING! Checklists are a useful servant but a dangerous master.*



**Standard checklists sold commercially especially need to be updated and rewritten as appropriate in the context of your business.**

**They can't take individual operations into account. Must be accompanied by procedures to explain how they are to be used and the standards to be achieved.**

**Without this, a sign-off on a checklist can be misleading– even dangerous.**



## CONCLUSION

# Privacy is important

EVEN THOUGH IT IS NOT DEFINED BY LAW  
EVERYBODY WANTS IT SO IT IS A PUBLIC GOOD WITH  
COMMERCIAL VALUE

WE HAVE MULTINATIONAL LAWS will we soon have a  
coherent international law?  
The work ahead needs you!





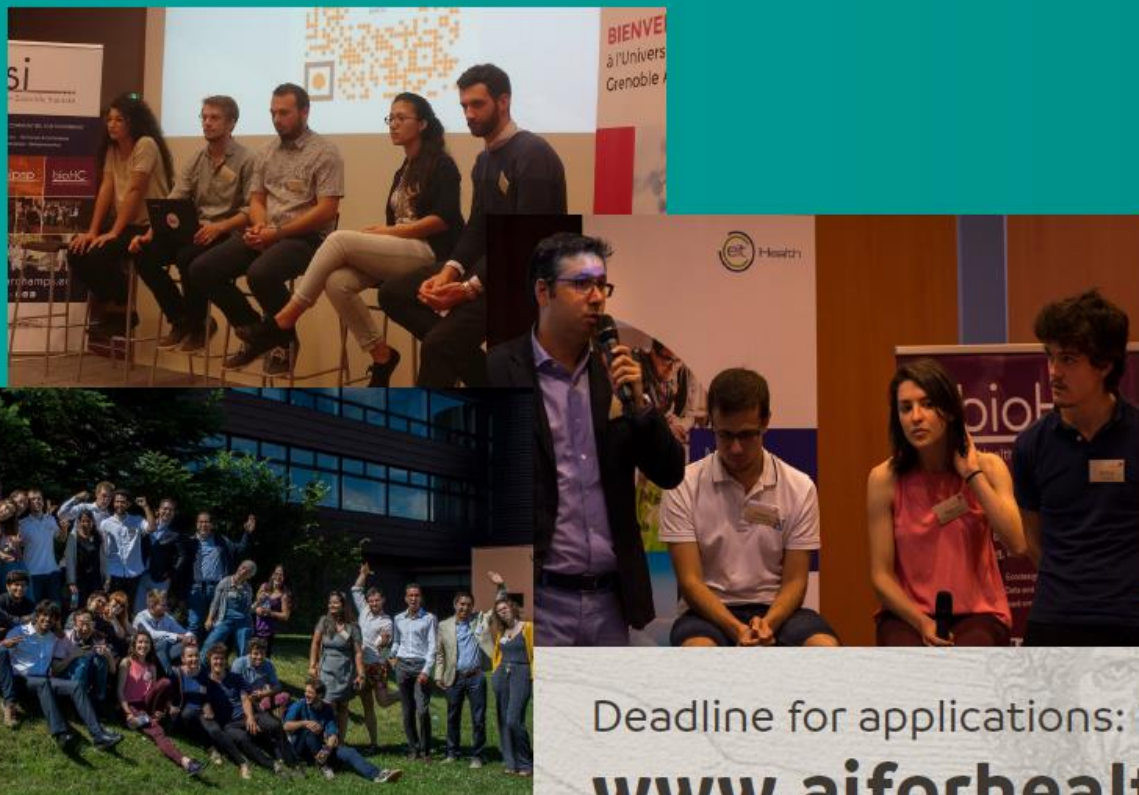
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SaferNano  
DESIGN & LAW



From a Global Concept to Local Projects  
Innovative educational tools to better understand sustainable development



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Dr. Ilise L. Feitshans JD & ScM and DIR

***GLOBAL HEALTH IMPACTS OF  
NANOTECHNOLOGY LAW***

BRINGING HEALTH TO WORK

DESIGNING AN EFFECTIVE OSHA COMPLIANCE PROGRAM

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PROJECT



# GLOBAL HEALTH IMPACTS OF NANOTECHNOLOGY LAW

A Tool for Stakeholder Engagement

Ilise Feitshans