

Data Protection Law in an Evolving World

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Seminar taught to [LLM International Business Law](#)'s students, class of 2022

Table of content

- DESCRIPTION..... 3**
- TEACHING METHODS..... 3**
- LEARNING OBJECTIVES..... 4**
- SCHEDULE..... 4**
 - FEBRUARY THURSDAY 24TH - 2 PM..... 4**
 - FRIDAY 25TH- 2 PM 4**
- RESOURCES 5**
 - GENERAL RESOURCES 5**
 - INTERNATIONAL PROTECTIONS OF PRIVACY AND PERSONAL DATA 5**
 - EUROPEAN RESOURCES..... 5**
 - U.S. RESOURCES 6**
 - CHINESE RESOURCES 6**

Description

This seminar teaches data protection law in an evolving world. It will address the evolution from a right to privacy to a right to data protection, the legal obligations falling on businesses, and the role of the law and technologies in protecting individuals. It is an introductory seminar covering the basic principles and philosophy behind data protection law in Europe with some perspectives from other countries such as the United States and China.

This seminar starts with an historical standpoint on how the United States and some European countries have been progressively recognizing a right to privacy to protect individuals from the unauthorized circulation of their information and the “evil of the invasion of privacy by the newspapers.”¹

Then, it shows how the rise of computers and networks have demonstrated a need for new legislation specifically addressing the risks relating to data processing (centralization, retention, transfers...). The various approaches regulating to data processing will be discussed. The US cross-sector approach firstly suggested by the *code of fair information practices*, quickly shifted to a sectoral approach. Then, the initially territorially scattered European approach, with each member states adopting their own legislations, that evolved to an omnibus directive will be examined.

After this historical perspective, this seminar is deep diving into some data protection principles. Two U.S. federal laws (HIPAA and COPPA) are briefly presented and discussed. Section 5 of the Federal Trade Commission Act is also reviewed to show the potential advantages of a general rule.

The European legislative model is then studied in detail. Perspectives are given on the European Data Protection Directive (95/46) and the General Data Protection Regulation (2016/679). The principles they have in common and the novelty GDPR has brought to the European data protection framework is successively presented. More specifically, certain definitions and principles are examined to apprehend the various obligations falling on companies processing personal data. Afterward, this seminar is looking at the rules applying to the transfers of personal data, leading the discussion to the current Swiss legal system. Finally, the European enforcement system - and its problems - is presented.

After a brief presentation of the California Consumer Privacy Act and China’s Personal Information Protection Law a conversation is opened to assess GDPR’s eventual influences and if we can say that GDPR has become a “universal standard.”

Finally, this seminar questions the future of data protection laws. Are these laws sufficient to effectively protect individuals’ privacy? Why there might be a need to adopt other regulations to protect individuals from harmful technologies?

Teaching methods

This seminar is primarily on a lecture basis, but discussions and small groups exercises will also be organized to provide students with a more interactive format. During this seminar, students will be encouraged to contribute by asking questions and sharing their constructive thoughts. The contributions aim at helping students learn from one other as well as providing a more collaborative format for learning.

¹ L. Brandeis and S. Warren, [“The right to privacy.”](#) *Harvard Law Review* 1890, vol. 4, n° 5, p. 195.

Learning objectives

- Understand the concept and meaning of privacy
- Evaluate the various ways to protect personal data
- Understand the legislative need to adopt data protection laws
- Know the principles applying to data processing in some specific sectors in the U.S.
- Appreciate the GDPR's fundamental principles
- Comprehend some key definitions in GDPR
- Know the key obligations for data processors under GDPR
- Know the individuals' rights under GDPR
- Evaluate the extraterritorial influence of the European Data Protection's framework
- Be familiar with the Swiss data protection law
- Be familiar with the California's Consumer Privacy Act
- Be familiar with the China's Personal Information Protection Law

Schedule

February Thursday 24th - 2 pm

4 hours with a 30-minute break - 2pm - 3:45pm / 4:15pm - 6pm

- Brief Presentation of the objectives of the seminar
- Historical Presentation: from a right to privacy to a right to data protection
- Presentation of the international protections
- Presentation of the U.S. sectoral system

Coffee Break

- Presentation of the EU omnibus system
- Exposé of the some of the rules applying in Europe to the processing of personal data

Friday 25th- 2 pm

4 hours with a 30-minute break - 2pm - 3:45pm / 4:15pm - 6pm

- Presentation of the GDPR's key obligations for businesses
- Deep dive on the European right to be forgotten
- Presentation of the rules regulating data flows outside of Europe
- Presentation of GDPR's enforcement mechanism

Coffee Break

- Presentation of the California Consumer Privacy Act
- Presentation of China's Personal Information Protection Law
- Discussion on the future of data protection law

Resources

General resources

- Sir Edward Coke, [Selected Writings](#), vol. 1.
- Louis Brandeis and Samuel Warren, "[The right to privacy](#)," *Harvard Law Review* 1890, vol. 4, n° 5, p. 195.
- Daniel Solove, "[A Taxonomy of Privacy](#)," *University of Pennsylvania Law Review* 2006, vol. 154, n° 3, p. 477.
- Julie Cohen, "[What Privacy is for](#)," *Harvard Law Review* 2013, vol. 126, n° 7, p. 1904.
- P. Schwartz, "[The EU-U.S. Privacy Collision: A Turn to Institutions and Procedures](#)," *Harvard Law Review* 2013, vol. 126, p. 1966.
- P. Schwartz et K.-N. Peifer, "[Transatlantic Data Privacy Law](#)," *Georgetown Law Journal* 2017, vol. 106, p. 115.
- J. Whitman, "[The Two Western Cultures of Privacy: Dignity Versus Liberty](#)," *The Yale Law Journal* 2004, vol. 113, p. 1151.

International protections of privacy and personal data

- ECHR, "[Guide on Article 8 of the European Convention on Human Rights](#)," 2021.
- A. Wade, "A New Age of Privacy Protection: A Proposal for an International Personal Data Privacy Treaty," *The George Washington International Law Review* 2010, vol. 42, p. 659.
- Data Guidance and Future of Privacy Forum, "[Comparing Privacy Law: GDPR v. CCPA](#)."

European resources

- C. Hoofnagle, B. van der Sloot and F. Zuiderveen Borgesius, "[The European Union general data protection regulation: what it is and what it means](#)," *Information & Communications Technology Law* 2019, vol. 28, p. 65.
- Corporate Europe Observatory, "[Big Tech Lobbying - Google, Amazon & friends and their hidden influence](#)," sept. 2020.
- O. Lynskey, "The Key Characteristics of the EU Data Protection Regime" in *The Foundations of EU Data Protection Law*, Oxford University Press, 2015, p. 14.
- O. Lynskey, "The Link between Data Protection and Privacy in the EU Legal Order" in *The Foundations of EU Data Protection Law*, Oxford University Press, 2015, p. 89.
- Record of processing: CNIL, "[Record of processing activities](#)," 2019.
- Data transfers:
 - CJEU, 6 October 2015, Schrems, [C-362/14](#), ECLI:EU:C:2015:650.
 - CJEU, 16 July 2020, Schrems II, [C-311/18](#), ECLI:EU:C:2020:559.
 - Adequacy decision by the EU Commission, Commission, [Adequacy decision](#).
 - Christopher Kuner, "[Reality and Illusion in EU Data Transfer Regulation Post Schrems](#)," *German Law Journal* 2017, vol. 18, p. 881.
 - C. Kuner, "[Territorial scope and data transfer rules in the GDPR: realising the EU's ambition of borderless data protection](#)," University of Cambridge Faculty of Law Research Paper no. 20/2021.
- Right to be forgotten:
 - CJEU, 13 May 2014, Google Spain, [C-131/12](#), ECLI:EU:C:2014:317.
 - EDPB, "[Guidelines 5/2019 on the criteria of the Right to be Forgotten in the search engines cases under the GDPR \(part 1\)](#)," 2020.
 - A. Satariano et E. Bubola, "[One brother stabbed the other. The journalist who wrote about it paid a price](#)," *The New York Times* sept. 2019.

- T. Bertram et al., "[The five years of the right to be forgotten](#)," CCS' nov. 2019, London.
- N. Purtova, "[The law of everything. Broad concept of personal data and future of EU data protection law](#)," *Law, Innovation and Technology* 2018, vol. 10, p. 40.
- J. Ausloos and P. DeWitte, "[Shattering one-way mirrors: Data subject access rights in practice](#)," *International Data Privacy Law* 2018, vol. 8, p. 4.
- B.-D. Hugues and W. G. Voss, "[EU General Data Protection Regulation sanctions in theory and in practice](#)," *Santa Clara High Technology Law Journal* 2021, vol. 37, p. 1.

U.S. resources

- Code of fair information practices: United States Department of Health, Education and Welfare, "[Records, computers, and the rights of citizens](#)," 1973, p. 41.
- Brief overview of HIPAA: "[HIPAA Privacy and Security for Beginners](#)," 2014.
- J. Chang, "[The Dark Cloud of convenience: how the new HIPAA omnibus rules fail to protect electronic personal health information](#)," *Loyola of Los Angeles Entertainment Law Review* 2013, vol.342, p. 119.
- Brief overview of COPPA: FTC, "[Children's Online Privacy Protection Rule: A Six-Step Compliance Plan for Your Business](#)," 2017.
- L. Matecki, "[Update: COPPA is Ineffective Legislation! Next Steps for Protecting Youth Privacy Rights in the Social Networking Era](#)," *Northwestern Journal of Law & Social Policy* 2010, vol. 5, p. 369.
- S.-A. Elvy, "[Commodifying consumer data in the era of Internet of Things](#)," *Boston College Law Review* 2018, vol. 59, p. 423.
- C. Hoofnagle, *Federal Trade Commission. Privacy Law and Policy*, Cambridge, 2016.
- California [CCPA's guide](#).

Chinese resources

- China's Personal Information Protection Law ([PIPL](#))
- Gibson Dunn, "[China Passes the Personal Information Protection Law, to Take Effect on November 1](#)," Sept. 2021.
- Skadden, "[China's New Data Security and Personal Information Protection Laws: What They Mean for Multinational Companies](#)," nov. 2021.
- Podcast : "[Is It Time To Behave? A Conversation With Dr. Angela Zhang on China's Approach to Data and Privacy](#)," dec. 2021.