

Data Protection & Privacy

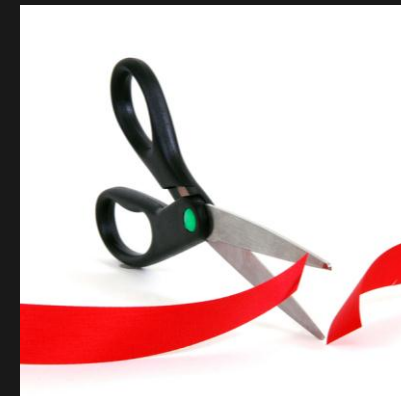
ISPA 23rd April

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Context

Background

- European Commissioner Viviane Reding has stated that the directive will cut red tape and save European business €2.3 billion per annum – industry disagrees
- We welcome the regulation's aim to bring maximum harmonisation but the text is too prescriptive
- Pleased that we have a Regulation and not a Directive



Key issues

Enforcement

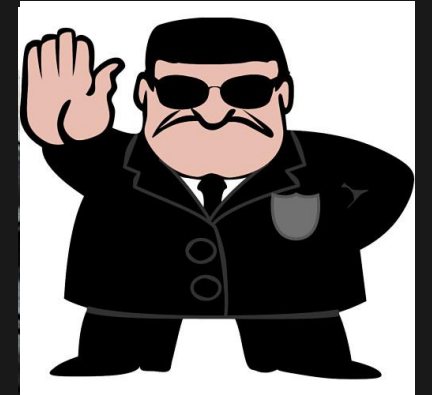
- “One-size-fits-all” approach
- Applies the same sanctions to intentional or negligent violations - huge burden and risk for business

Secondary rule-making

- Delegated acts cover a third of the proposal
- If the EC adopts prescriptive measures or dictates specific technology outcomes - will hinder innovation in privacy protection

Data processor and controller

- Need clear and precise defining obligations of data processors and controllers
- Obligations should be placed on the parties that are best situated to meet those mandates



Key issues

Right to be forgotten

- Controllers must notify any and all third parties about a request to erase personal data
- Should be limited only to data retained by and under the control of the data controller, and reasonably accessible

Consent

- Requirement of explicit consent could require users to opt-in dozens of times to use a single service
- This may degrade the overall user experience and may create a situation where users ignore all notifications
- Should provide flexible ways for companies to seek meaningful consent without degrading the user experience



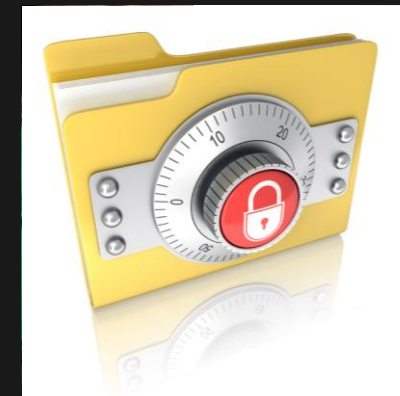
Key issues

Data portability

- Customer data portability should not create restrictive technical mandates
- Should be limited to data originally created by the user
- Companies must determine the format in which the data is given

Data breaches

- Notification should not be required in all situations, as that eliminates flexibility
- It may not be possible to notify within 24 hours without slowing problem analysis and resolution
- Notification should be required only when there is a significant risk of serious harm to the data subject



Microsoft priorities

Proactive Priorities

1. Greater harmonisation across Europe and clarification of applicable law
2. Facilitating international data transfers in a cloud context, including in response to governmental and litigation demands
3. Ensuring that opt-out consent models are allowed



Microsoft priorities

Reactive Priorities

1. Unworkable consent models (requiring prior and explicit consent...)
2. Disproportionate penalties without clear justification and criteria
3. Prohibitions on behavioural targeted marketing (via "right not to be profiled"...)

