

PRIVACY AFTER SNOWDEN: THE LIMITS OF THE LAW?

LEGAL FRAMEWORK

EUROPEAN CONVENTION OF HUMAN RIGHTS:
Articles 6, 8, 10 and 11.

EU CHARTER OF FUNDAMENTAL RIGHTS:
Right to Data Protection and Data Protection
Directive
Right to Privacy

REGULATION OF INVESTIGATORY POWERS ACT
2000 (UK) :
Interception of Communications (s.6, s.8(4))
Access to Communications Data (s.21 and 22)

FOREIGN INTELLIGENCE SURVEILLANCE ACT:
s.1(8)(a) Acquisition of 'foreign intelligence information'

THE EU DATA PROTECTION REGIME

Applies to the 'processing' of 'personal data'

Both prohibitive and protective:

PROHIBITIVE: Data processing is only lawful if it has a
legitimate basis (Art 7)

PROTECTIVE:

Safeguards for personal data processing (Art 6)

Specific rules for sensitive data (Art 8)

Enumerates rights of the data subject (Art.10-18)

Data protection as a fundamental right (EU Charter, Art 8)

THE LIMITS OF DATA PROTECTION

TWO KEY LIMITS:

- Exemptions for data processing for 'national security' purposes and for i.a. 'the prevention or detection of crime'
- Geographic scope of application of data protection rules (Art.4(1) Directive)

PREVENT INITIAL TRANSFER OF DATA?

- Adequacy decisions
- Binding corporate rules
- 'Safe Harbor' Agreement (USA)

ALTERNATIVE LEGAL SOLUTIONS?

OTHER LEGAL AVENUES?

Big Brother Watch et Al. v UK (ECHR)

Receipt of foreign intercept data
Interception of 'external' communications on the basis of general
rolling warrants

Digital Rights Ireland (ECJ)

- REFORM OF EU DATA PROTECTION RULES: 'anti-FISA' clause?
Authorisation of EU DPA required before data provided to third-
country court/administrative authority

- REFORM OF DATA PROTECTION ENFORCEMENT

- ADEQUATE PROTECTION FOR WHISTLEBLOWERS

CONCLUSIONS AND FUTURE CHALLENGES

Reduced trust in the online environment

Highlights differing national attitudes to data
protection and the 'privacy paradox'

Impotence of EU Institutions: commercial interests
trump fundamental rights interests

Increased normalisation of surveillance and
difficulty in articulating 'harms' of surveillance

Reveals the limits of legal code: need for 'west
coast code' solutions?



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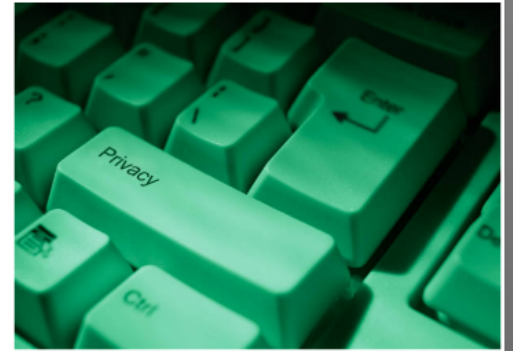
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