Presentation Outline

- World Views on Privacy
- International Privacy Laws: Comprehensive and Sectoral
- Conflict
- A Common Approach: PIAs
- Observations
- Suggestions
- Conclusion
World Views on Privacy

General belief: privacy is a fundamental human right that has become one of the most important rights of the modern age.
World Views on Privacy

Privacy protected by various world-wide organizations:

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
World Views on Privacy

- Privacy also recognized and protected by individual countries
- At a minimum each country has a provision for rights of inviolability of the home and secrecy of communications.
- Definitions of privacy vary according to context and environment.
World Views on Privacy

United States: “Privacy is the right to be left alone”
   - Justice Louis Brandeis

UK: “the right of an individual to be protected against intrusion into his personal life or affairs by direct physical means or by publication of information

Australia: “Privacy is a basic human right and the reasonable expectation of every person”
World Views on Privacy

Reasons for defining and protecting privacy:

1. Remedy past injustices (Central Europe, South America, South Africa)
2. Promote electronic commerce (Asia)
3. Ensure laws are consistent with Pan-European laws (central and eastern Europe are adopting new laws with the hope of joining the European Union)
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International Privacy Laws

Two types of privacy laws have been established by various countries to protect privacy:

Comprehensive and Sectoral
Definition: general laws that govern the collection, use and dissemination of personal information by public and private sectors.

Examples: European Union, Australia, Canada and the UK.
International Privacy Laws
(Comprehensive Laws)

- Often comprehensive laws require commissioners or some independent enforcement body.

- The government must consult the body when drawing up new privacy legislation.

- Difficulty: lack of resources to conduct oversight and enforcement; agencies under control of government.
Examples:

1. European Union requires all member countries to have an independent enforcement body

2. UK has an official to enforce the jurisdiction of the Freedom of Information Act (discussed later)
International Privacy Laws (Sectoral Laws)

- Idea is to avoid general laws and, instead, focus on specific sectors

- Advantage: enforcement is achieved through a range of mechanisms

- Disadvantage: new legislation has to be introduced with each new technology.

- Used by the United States
European Union Council adopted the new *Privacy Electronic Communications Directive*

- Prohibits secondary uses of data without informed consent
- No transfer of data to non EU countries unless there is adequate privacy protection
Comprehensive Laws
Canada

- **Canadian Personal Information Protection and Electronic Documents Act**

- Provides protection for certain personal data transferred from the European Union to Canada.
1. No written constitution, but in 1998 approved the *Human Rights Act* which incorporates the *European Convention on Human Rights* into domestic law.

2. *Data Protection Act of 1998*
Comprehensive Laws
United Kingdom

- Data Protection Act covers records held by government agencies and private entities
- Individual has right:
  a. Of access to personal information
  b. To prevent processing for direct market purposes
  c. To prevent processing likely to cause damage or distress
  d. To compensation
  e. To rectification, blocking, erasing or destroying data
Comprehensive Laws
United Kingdom

- Data controller must inform individual if their information is being processed.
- Requires the establishment of an independent commissioner to enforce the act.
- All entities that maintain records must register with the Data Protection Commissioner.
Comprehensive Laws
United Kingdom

3. In addition to the Data Protection Act, the UK has also adopted the OECD guidelines on the Protection of Privacy and Transborder Flows of Personal Data.
No explicit right to privacy in the constitution
Limited constitutional right to privacy implied in number of provisions in the Bill of Rights
United States did not adopt a comprehensive privacy law, instead have a patchwork of federal laws that cover specific categories of personal information

ie. financial reports, credit reports, video rentals, etc.
Sectoral Laws
United States

- Employs specific laws, but no legal protections for individual’s privacy on the internet are in place.

- White House and private sector believe that self-regulation is enough and that no new laws are needed (exception: medical records).

- Leads to conflicts with other countries’ privacy policies.
Example: Privacy Act of 2003

1. Criminalizes the misuse, purchase, sale or disclosure of an individual’s social security number without individuals permission
2. Attempts to preempt identity theft and other types of theft by prohibiting the display and usage of social security numbers and their derivatives on federal documents also, by putting the responsibility on the commercial entities
3. Provides legal recourse for FTC on behalf of individuals for misuse, trafficking of personal identifiable information in between commercial entities and nonaffiliated third parties.
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Conflict
European Union v. The United States

- 1998: US lobbied the European Union and its member countries to convince them that the US system is adequate
- Result was the negotiation of the “Safe Harbor Agreement”:
  - US companies would voluntarily self-certify to adhere to a set of privacy principles worked out by US Department of Commerce and Internal Market Directorate of the European Commission
Conflict

European Union v. The United States

- Negotiations lasted 2 years and despite doubts the agreement was passed by the Commission on July 26, 2000
- The agreement (criticized by both US and Europe privacy advocates and consumer groups) rests on a self-regulatory system in which companies merely promise not to violate their declared privacy practices
- Little enforcement: agreement being re-evaluated this year
Conflict

European Union v. The United States

Main issue: European commission has doubts to the sectoral/self-regulatory approach to privacy protection the US has adopted.
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A Common Approach
Privacy Impact Assessments

- An evaluation conducted to assess how the adoption of new information policies, the procurement of new computer systems, or the initiation of new data collection programs will affect individual privacy.

- The premise being that considering privacy issues at the early stages of a project cycle will reduce potential adverse impacts on privacy after it has been implemented.
A Common Approach
Privacy Impact Assessments

Requirements:
1. PIA process should be independent
2. PIA performed by an independent entity (office and/or commissioner) not linked to the project under review.
3. Participating countries: European Union, Canada, US, etc.
A Common Approach
PIA – European Union

- All European Union members have implemented PIAs

- Under the *European Union Data Protection Directive*, all EU member must have an independent privacy enforcement body
A Common Approach
PIA – Canada

- Canada: first government to make PIAs mandatory
- PIA ensure that organizations/federal departments are held accountable for their information handling practices
- Commissioner functions independently from other parts of the government when investigating.
- To ensure this independence commissioner serves as an officer of the Parliament and reports directly to Canada’s House of Commons and it Senate.
A Common Approach
PIA – United States

- PIAs soon to come to the United States
- In the mean time, the US passed the E-Government Act of 2002 which requires federal agencies to conduct privacy impact assessments before developing or procuring information technology
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Observations

Observation 1: At present too many mechanisms seem to operate on a national or regional, rather than global level (OECD).

Observation 2: Use of self-regulatory mechanisms for the protection of online online seems somewhat haphazard and is concentrated in a few member countries.
Observations

Observation 3: technological solutions to protect privacy are implemented to a limited extent only.

Observation 4: not enough being done to encourage the implementation of technical solutions for privacy compliance and enforcement (only a few member countries reported this as an area with much activity).
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Suggestions

Suggestion 1: More member countries should encourage appointment of company privacy officers to oversee data processing (often it is implemented by companies on a purely voluntary or self-regulatory basis)
Suggestions

Suggestion 2: countries should focus on areas where individual users suffer the most harm as a consequence of misuse of their personal data.

Suggestion 3: Key for coming years will be to make traditional means of regulatory enforcement even more efficient
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Conclusions

- Still work to be done to ensure the security of personal information for all individuals in all countries.

- Critical that privacy protection be viewed in a global perspective, rather than in a purely national one, to better handle privacy violations that cross national borders.