

# International Privacy Laws

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Sensitive Information in a Wired World

October 30, 2003

# Presentation Outline

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

# World Views on Privacy

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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

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- 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

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- 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

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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

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- 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

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

Comprehensive and Sectoral

# International Privacy Laws

## (Comprehensive Laws)

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- 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)

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- 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

# International Privacy Laws

## (Comprehensive Laws)

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- 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)

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- 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



# Comprehensive Laws

## European Union



- 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

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- *Canadian Personal Information Protection and Electronic Documents Act*
- Provides protection for certain personal data transferred from the European Union to Canada.



# Comprehensive Laws

## United Kingdom

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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

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- 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

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- 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

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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*.

# Sectoral Laws

## United States

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- 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

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- 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

# Sectoral Laws

## United States

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- Example: Privacy Act of 2003

1. Criminalizes the misuse, purchase, sale or disclosure of an individual's *social security number* without individuals permission

# Sectoral Laws

## United States

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(Privacy Act of 2003 continued)

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

# Sectoral Laws

## United States

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(Privacy Act of 2003 continued)

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

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- 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

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- 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

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- 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

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- 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 its Senate.

# A Common Approach

## PIA – United States

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- 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

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- 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

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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

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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

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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

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- 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.