

Dialogue on Diversity  
Cyber-security and IT in a Free Society

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# How does the U.S. and E.U. think about Cyber Security



# U.S. v E.U.

- Consumer Rights
  - Federal Privacy Act
  - Commercial Law is Sector Based:
    - Federal Trade Commission
    - Federal Communication Commission
  - State Attorneys General
  - Obama Administration's Framework on Consumer Data Protection
- Human Right
  - Universal Declaration of Human Rights (Article 19)
  - European Convention on Human Rights (Article 8-12)
  - Charter on the Fundamental Rights of the European Union (Articles 7-8)
  - Data Protection Directive 95/46/EC
  - Convention 108
  - The first Proposed EU Law is on Data Protection

# U.S. Government's View of Privacy and Cyber Security

- The Obama Administrations Consumer Bill of Rights
- Department of Homeland Security's Chief Privacy and Civil Liberties Officers (Statutory)
- The Office of Director of National Intelligence Civil Liberties and Privacy Office
  - National Counterterrorism Guidelines for Access, Retention, Use and Dissemination by the NCTC
- Trustworthy Cyberspace: Strategic Plan for the Federal Cyber-Security Research and Development Program
- The Federal Privacy Act

# U.S. View of Cyber Security = Critical Infrastructure

- Definition: Critical Infrastructure Protection Act 2001 [42 U.S.C. 51095(e)]
  - “critical infrastructure” means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.

# U.S. Challenge

- Internet communication routing system
  - Decentralized
  - Volume and types of devices connected
  - Discerning threats from non-threats
    - Botnets good v bad (both rely upon use of consumer computing devices)
    - ID Thieves (successful at stealing things of value)
    - Criminal rings and terrorist find this environment inviting
    - Low public awareness of good data hygiene
    - Learning how to make data security seamless, low-cost, easy to use for institutions and individuals
    - Growing an Internet user friendly social, cultural and economic model

# What is Cyber Security to Consumers and Businesses?



# What is Cyber Security to Law Enforcement?



# What is Cyber Security to Intelligence Agencies and National Defense?



# U.S. Policy Struggle Over Oversight of Cyber Security

- Civil Agency Control
  - Department of Homeland Security
  - Department of Justice
- Department of Defense Agency Control
  - Office of the Director of National Intelligence
  - National Security Agency/US Cyber Command

# U.S. Administration vs. Congress

- What Happened in 2012
  - Secret Presidential Policy Directive 20
  - National Strategy for Trusted Identities in Cyber Space Standards Development Initiative
- What did not happen in 2012
  - Electronic Communication Privacy Act Reform
  - Cyber Security Legislation
  - Consumer Online Data Protection

# E.U. View of Cyber Security and Privacy

- Human Right
  - Universal Declaration of Human Rights (Article 19)
  - European Convention on Human Rights (Article 8-12)
  - Charter on the Fundamental Rights of the European Union (Articles 7-8)
  - Data Protection Directive 95/46/EC
  - Convention 108
  - The first proposed EU Law is on Data Protection

# What happened in the EU in 2012

- European Commission proposed to modernize Data Protection rules to simplify business compliance and establish new privacy rights for individuals  
[http://europa.eu/rapid/press-release\\_IP-12-46\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-46_en.htm?locale=en)

# Proposed Privacy Law

- Article 2 page 40 National Security and Law enforcement carve out, monetary policy
- Article 4 Definitions page 41-43
- Article 5 Fair Information Practices Principles
- Article 6 Lawful Processing
- Article 7 Burden of proof of consent
- Article 8 Children below 13
- Article 9 Special Categories (race, ethnic, politics, religion, health, gender, criminal record, or security measures)

# Proposed Privacy Law Cont'd

- Chapter III - the Rights of Data Subjects [starts on page 47]
  - Obligations of the data controller to the data subject (Article 12-13)
  - Transparency to data subject (Article 14 [(g) allows data transfers to a third country or international organization under adequacy decision by the Commission)
  - Information access to data subject (Article 15)
  - Accuracy (Article 16)
  - Right to be Forgotten (Article 17) [page 51]

# Proposed Privacy Law Cont'd

- Right of Data Portability (Article 18)
- Section IV Right to Object and Profiling (Article 19 and 20 [page 53-54])
- Section V Options for each state to limit the power of national security, intelligence or law enforcement
- Article 23 – Privacy-by-design [page 56]
- Article 30 – Security [page 60-67]
- Section 5 – Out of Court Procedures (?)

# Human Rights Perspective

- Fundamental Rights: Dignity, Freedom, Equality, Solidarity, Citizenship and Justice
- New Rights: Data protection, bioethics and the right to good administration
- Establishes the right of EU citizens to be heard and have redress of grievances

# Popular Movements Against Surveillance

Freedom not Fear 2008



# 2008: Berlin 70,000 Protestors



# The U.S. and E.U. Internet Policy Convergence?

- U.S. NTIA Multi-stakeholder Process to Establish new Privacy Protections
- The EU moving to codify its first law
- Need for linkage
  - The Internet has no borders
  - The Internet has no language
  - The Internet has no politics
  - The Internet has over 2.4 billion users <http://www.internetworldstats.com/stats.htm>

# Cyber Security Challenge

- Deciding who will decide
- Tension between making software, firmware and hardware better (harder to breach, compromise or undermine)
- Better educated population on cyber security and good data hygiene
- Hardening weak links against other forms of attack e.g. social engineering, man in the middle, publicly available data exploits