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surprise



Citizens' legal recommendations from SurPRISE: a litmus test for current policy initiatives?

Panel “Legal aspects of privacy and security”
Joint PACT/PRISMS/SurPRISE final conference

Vienna, 14/11/2014

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I. **surprise**

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“SURveillance, PRivacy and SEcurity”



Involving citizens

*Participatory assessments of the
factors and criteria
determining acceptability and acceptance
of security technologies in Europe*



Process

Background studies and research design ✓

- social sciences → law

Large-scale events ✓

- 1700 people/9 countries
- Ca. 300 Recommendations

Small-scale events ✓

- 190 people/5 countries
- Ca. 100 Recommendations/consensus

Analysis & policy documents (ongoing)

- Quantitative & qualitative data + stakeholders' feedback



Our problem: trading-off

DP \neq privacy
→ qualified
rights

Meaning of
security?

Unpredictable
judgments



Our solution:

Essence-based model of permissible limitations (D3.2) – art. 52 CFREU geared on balanced-risk awareness (D3.4)



Legal recommendations

A. Policy actions

1. Harmonize SOSTs with FR
2. Permissible limitations test based on inviolability of core
3. TA at early stage of policies in AFSJ
4. Involve DPAs, techies & civil society in TA
5. Involve citizens in decision-making (right to good administration)

B. Open questions for citizens

- Citizens' understanding of Sur PRI SE
- Appeal of trade-off
- Trust in institutions
- Role could the law play



Challenges

Concern

- Obtaining genuine (i.e. unguided) answers

Habit

- Law absent in social science research

Practice

- How to ask legal questions?

Summits

- Few legal questions; qualitative part



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I. Citizens' recommendations

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Stunning replies on law and privacy



Recommendations – large-scale events (D6.10)

To the European politicians | Az európai politikusok részére | Pour les politiciens européens | Per i politici europei
An die europäischen Politiker | Til de europeiske politikere | Para los políticos europeos | Til de europæiske politikere

1. Regulation, safeguards, oversight

Control!

2. Education and information

3. Mechanisms to control technology and alternatives



The law meets empirical (small-scale) studies (D7.1)

Questions of direct legal import

- Definition of privacy. Is there a core?
- Definition of security
- What SOST for which threat?
- Opinions on trade-off
- Level of (judicial) review
- Level of data protection controls



Recommendations 2 (D7.2)

- No privacy and security trade-off if law, safeguards and oversight are in place
- Request measures that increase oversight/change society



Control!

- Technology works only as short-term solution



In practice

The recommendation in detail/What should be done/how to address the problem?

A strong state data protection authority.

Creation of universally applicable standards within a charter to be drawn up internationally. Creation of a supreme authority to supervise and maintain these standards. Basic right to view personal data.

- < Create strict legal guidelines.
- < Better controls/control bodies (control of control).
- < Create uniform preconditions nationally/in Europe.

Ensure prevention of manipulation of data.

It is a duty of the State to adopt an active role in protecting the storage of citizens' data, and as far as possible to anonymise and protect. Commercial and private use in particular must be prohibited. The State should formulate clear and enforceable legislation

- < Passing on of data must not be encoded in the GTCs.
- < Users must be able to determine which data can be circulated for commercial use.
- < CH providers must completely delete data after a certain time.

Self-determination regarding the use of our data, handling the technology.

Strict legal framework conditions for using DPI, which guarantee that

- < only a government authority uses DPI
- < this authority is supervised by a political institution.
- < Formulation of a charter
- < Global data protection officer
- < Setting up a tribunal similar to the UNO war crimes tribunal
- < Basic rights regarding privacy must be guaranteed.
- < Guarantee independent control through competent bodies.
- < User friendly regulation/info of terms of use ♦ enable consumers to control their own data usage.

Websites should undertake to respect a charter. In return they will receive a quality label that is managed by an organisation – already existing or to be set up – that is international, independent and trustworthy. This charter will cover the following points and requirements in particular:

Create national or international laws. The use and evaluation of DPI must be restricted, with the exception of legal issues and issues of national security. Better information for citizens regarding these technologies. An ethics committee for the IT sector.



Coding (I)

Macro topics (// worries expressed)

Right to privacy

Data subjects' rights

Law enforcement

Commercial actors/private sector

Data collection and security online

Independent oversight authorities

Adoption of regulation

Transparency/information

Technology-specific

Alternatives

Participation

Miscellanea



Coding (II)

Law enforcement	#	Countries	Small-scale event
Fight abuses (prevention, appropriate access, proactive approach, necessary use)	10	CH, HU, UK, ES, IT	Y moral values + whistle-blowing schemes
Liability, strict penalties/sanctions (criminal law)	15	CH, AT, NO, UK, ES, IT	Y
Switch-off button for surveillance options – limitation of surveillance	15	CH, AT, HU, NO, ES, IT	Y
SOST used only when suspects have been identified by other investigative means	2	IT	/
Purpose limitation/ deletion /proportionality (authorization of courts, checks and balances)	16	AT, HU, UK, ES, IT	Y, SOSTs for specified purposes, safeguards
No automated decisions	1	AT	/
Secure storage	1	HU	/



III. Recommendations: what import?

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Similarity with existing recs

Litmus test for policy initiatives



Similarities with experts' work

- I. Convergence with project's recommendations
- II. Convergence with existing recommendations
 - I. EGE,
 - II. EP reaction to NSA scandal,
 - III. Commissions' COMM on safe harbour



Litmus test (I)

Revision of Safe
Harbour;
Conclusion of
treaty

- Law must follow data in transit: adopt legislation applicable abroad, US companies must comply
- Enable collective action/lawsuit against abuses;
- Harmonize law at the EU level (mostly so that it applies uniformly)
- Enable switch-off buttons in technology

DP Regulation

Privacy by design



Litmus test (II)

PIAs/TA

- Prior assessment of technologies, made public
- Finance research on tech, disseminate to public
- OK using tech only if: legal bases, core is not infringed, strictly needed to fight crime, the action of police are controlled, the tech is effective, and targeted.

Horizon 2020

Test for permissible
limitations



Litmus test (III)

- A human–centric use of SOSTs, to minimize (adverse) automated decisions
- Accountability of authorities
- Introduce liability for misuse and abuse
- A commission of tech experts, lawyers, sociologists/philosophers, DPAs data, NGOs, LEAs and lay citizens in charge of evolution o SOSTs...

DP directive as
revised by the EP



In conclusion

Bring law to empirical studies

Jargon-free

Citizens can have a direct say in policy-making

Litmus test

Many thanks for your attention!

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