GDPR – a European perspective

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Go-live: tomorrow!!

ARE NON-EU BUSINESSES CAUGHT? (CLUE: OFTEN!)

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- Art 3 – territorial scope
- 3(1): GDPR applies if you process data in the context of the activities of an establishment in the EU, regardless of where the processing itself takes place
- 3(2): GDPR applies to the processing of personal data of data subjects who are in the EU by controllers or processors not in the EU, where the processing activities are related to:
  - (a) the offering of goods or services to such data subjects in the EU, or
  - (b) the monitoring of their behaviour as far as the behaviour takes place in the EU
- "Establishment" "implies the effective and real exercise of activity through stable arrangements"

PENALTIES – HOW MUCH??

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- Headline: EUR20million or 4% of global turnover (so, take Lockheed Martin, with $50bn turnover in 2017: 4% = $2bn)
- But: UK Regulator (ICO) playing down scale. (Context: current UK cap is cEUR450k)
- But: other EU Regulators less so.
- And fines up to that amount are the penalty for infringing each of the basic obligations and rights

PRIVATE ENFORCEMENT

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- Already possible – for damage or distress
  - Vidal-Hall v Google
- Article 82
  - "Any person who has suffered material or non-material damage as a result of an infringement of GDPR shall have the right to receive compensation from the controller or processor for the damage suffered"
  - Joint liability, unless can prove otherwise
  - Contributions
- Real concern is reputational damage

MARKETING

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- Entirely separate law – PECR/ePrivacy Regulation
- Cannot send unsolicited direct electronic marketing to individual subscribers
- Consent….
- Soft opt-in
- ePrivacy:
  - 'end users who are natural persons'
- Timeline

DATA PROTECTION IMPACT ASSESSMENTS

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- Article 35
  - Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.
- ICO Guidance
  - It is also good practice to do a DPIA for any other major project which requires the processing of personal data.

- Your DPIA must:
  - describe the nature, scope, context and purposes of the processing;
  - assess necessity, proportionality and compliance measures;
  - identify and assess risks to individuals; and
  - identify any additional measures to mitigate those risks.
- To assess the level of risk, consider both the likelihood and the severity of any impact on individuals.
- High risk could result from either
  - a high probability of some harm, or
  - a lower possibility of serious harm.

QUESTIONS?

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