



International journal for the
Data Protection Officer
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Perceptions to the GDPR: US

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Although privacy in the EU has long been considered a fundamental human right since the time of World War II, the GDPR, which goes into full enforcement on May 25th, 2018, expresses the extraordinary value of EU individuals' data privacy rights in the digital age.

The GDPR is a sweeping regulation which establishes, as law, the privacy rights of EU data subjects for the use of their data and includes steep monetary penalties for non-compliance which can be the greater of 4% of a company's worldwide gross revenue or 20 million pounds. One of the most staggering features of the GDPR, from the U.S. perspective, is the fact that the GDPR will impact any company that provides products or services to EU data subjects even if the company has no physical presence in any EU member states.

U.S. companies who provide products and services to E.U. data subjects, especially companies who offer free services but monetize the use of consumer data, are developing and will continue to cultivate ways to comply with the GDPR. These GDPR initiatives will involve developing new processes, procedures, and technologies to manage compliance going forward including the management of data breach notifications, data subject tracking, and consent controls.

Enormous reliance on the internet in the digital age has enabled a thriving and connected global marketplace for consumers around the world. Due to this global digital marketplace, complying with the GDPR means that U.S. companies who may currently not provide goods or services to EU data subjects must still develop GDPR-ready data privacy design to accommodate the possibility that future EU data subjects may consume their goods or services. The extraterritorial reach of the GDPR and its impact on businesses is a major shift in how U.S. companies previously approached data privacy regulations in strict jurisdictional ways.

The GDPR is also coming into effect at an interesting time when many consumers in the U.S. are paying close attention to the juxtaposition of how the U.S. and the EU will separately address newsworthy data privacy issues which have arisen from the recent events like the Cambridge Analytica/Facebook incident. Many of the privacy protections that U.S. companies are putting in place to comply with the GDPR for EU data subjects are unlikely to result in GDPR-style legislation in the U.S. However, it remains to be seen if U.S. companies voluntarily adopt some GDPR-types of personal data privacy protections for U.S consumers without new U.S. government mandated regulations.

In U.S., data privacy laws are a currently a patchwork of regulations that deal with privacy based on types of data which include federal laws related to the privacy of banking information (GLBA, Pub.L. 106–102, 113 Stat. 1338), social security information (FCRA, 15 U.S.C. §1681 et. seq.), health information (HIPAA, Pub. L. 104-19 §§ 262 & 264), etc. Also, states continue to develop their own jurisdictional data privacy laws like California's internet "revenge porn" law (Nonconsensual Pornography - Penal Code 647(j)(4) PC)) or New York's financial services law (Cybersecurity Requirements for Financial Services Companies 23 NYCRR § 500).

In the EU, due to the broader definition of personal or private data in the GDPR and its comprehensive data subject rights, global compliance with the GDPR will continue to evolve as new precedents are set with all future GDPR enforcement actions. Data privacy experts will be watching as companies successfully navigate and mature in their management of GDPR compliance as an example to companies in the U.S. and around the world.

On May 25, 2018, when the GDPR goes into full effect, it will be the beginning of a whole new world in the data privacy community and one that all of us will be watching very closely.

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