Global Privacy Protection
& Global Business Fluidity

Is it Impossible Mission Force?

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Agenda

- Preamble
- Global Context Dynamics
- The Vision for Accountability
- Accountability Benefits
- Global Regulatory Environment
- The Path Forward
Making History - Again

[Image: Garage as birthplace of Silicon Valley]

This garage is the birthplace of the world's first high-technology region, Silicon Valley. The idea for such a region originated with Dr. Frederick Terman, a Stanford University professor who encouraged his students to start up their own electronics companies in the area instead of joining established firms in the East. The first two students to follow his advice were William R. Hewlett and David Packard, who in 1938 began developing their first product, an audio oscillator, in this garage.

California Registered Historical Landmark No. 976

Plaque placed by the State Department of Parks and Recreation in cooperation with Hewlett-Packard Company, May 19, 1989.
On October 6, 2014, HP Company announced it will separate in two independent publicly-traded companies:

**Hewlett Packard Enterprise:**
- Enterprise technology infrastructure, Software, Services and Financing businesses,

**HP Inc:**
- Printing and Personal systems businesses,

*Separation finalized November 1, 2015*
The New Style of Business for HPE

• The New Style of Business promises agility, flexibility, remarkable customer experiences, and employee productivity; with reduced costs.

• It is driven by transformation in:
  • Protection of digital assets
  • The data-driven organization
  • Enabling the most productive workplace
  • Moving to a hybrid infrastructure

• Yet it creates new risks and changes how we must think about protecting the fundamental right to Privacy
Global Context Dynamics

Trends & Challenges
Trends & Challenges (Business)

Technical & Business Context

– Complex, Global & Multi Dimensional Context
– Data flows more WW, Dynamic & Fragmented
– Exponential increase of data creation / collection

– Highly dynamic Multi Stakeholder game
– Highly rewarding and potentially privacy risky trends
– Data Processing drives Innovation, Business Intelligence & Economic Growth
– Some Business models NOT “Privacy” tested

We are at a break point… …And this change will speed up…
Trends & Challenges (Legal)

**Regulatory Context**

– Globalization and technologies straining the traditional frameworks

– Laws are critical but often lagging behind new technologies and business models

– Limitation of approach based only on legal compliance tool

– Uncertainty in all regions and in all business sectors

– Agreement on fundamental principles but different implementations

– Too much emphasis on geography specific criteria

– Tension exacerbated by highly publicized cases (Snowden, Schrempf, MS,…)

...Lack of interoperability between regional legal approaches...
Trends & Challenges (Societal)

– Social norms may be changing but protection has to stay
– New Innovative Business models not obvious or understandable by Data Subjects
– Cloud, Big data, IoT and more will make it even more “foggy”
– Traditional “Consent & Control” approach may be not sufficient
– Fear & Doubts are shaping perception, Trust becomes a key requirement
– Data Subjects & Politics concerns drive increased protections
– Excessive Reactivity under scandals pressure drives “impulsive” laws
– Awkward user experience and potential decreased benefits
– Risk of slowing down acceptance or killing new technologies & practice

… Information Society as a whole pushing for “A” paradigm change
The vision for the “A” ....
## Accountability: Moving to an Accountability Culture

<table>
<thead>
<tr>
<th>Liability</th>
<th>Accountability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decisions are made based on local laws and regulations</td>
<td>Decisions are made based on a set of ethics- and value-based criteria in addition to liability</td>
</tr>
<tr>
<td>➢ Based on theoretical compliance</td>
<td>➢ All employees accountable for stewardship of data under their charge</td>
</tr>
<tr>
<td>➢ Focuses on the minimum standard</td>
<td>➢ Effective privacy handling</td>
</tr>
<tr>
<td>➢ Target on known technologies &amp; practices</td>
<td>➢ Based on expectations and risks</td>
</tr>
</tbody>
</table>

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Risk based approach for an Accountable company?

Which ones and for whom … and where???

1. Compliance Risk
2. Reputation Risk
3. Investment Risk
4. Reticence Risk
5. Business Continuity Risk
6. Compounding Risk

Analyzing the Risk, Managing the Risk, Addressing the risk, NOT TAKING the risk
Privacy Accountability Framework

Processes **AND** Demonstration of Capacity

<table>
<thead>
<tr>
<th>Oversight</th>
<th>Identify Risks and Opportunities</th>
<th>Integrated Governance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commitment</td>
<td>Implementation</td>
<td>Validation</td>
</tr>
<tr>
<td>• Solid policies aligned to external criteria</td>
<td>• Mechanisms to ensure policies and commitments are put into effect with employees</td>
<td>• Monitoring and assurance programs that validate both coverage and effectiveness of implementation</td>
</tr>
</tbody>
</table>

**Contextual Approach**

- Demonstrate capacity to internal stakeholders (Management, Internal Audit, Board)
- Demonstrate capacity to external stakeholders (Trust Agents, Regulators)
- Demonstrate capacity to individual data subjects
Accountability benefits
Far beyond traditional compliance deliverables
Accountability consists of:
• Defining and accepting responsibility
• Ensuring implementation of appropriate actions
• Explaining and justifying actions
• Remediating failure

Article 29 WP 173, Opinion 3/2010 on the principle of Accountability:

➢ Data protection must move from ‘theory to practice’.

(i) need for a controller to take appropriate and effective measures to implement data protection principles;

(ii) need to demonstrate upon request that appropriate and effective measures have been taken. Thus, the controller shall provide evidence of (i) above.

Concept universally recognized .. already implemented in some jurisdictions, acknowledged or under inclusion in others....
Privacy Transformation in an Information Age

Traditional Approach

- Individual Autonomy; notice and consent
- Point-to-point transfers requiring approval
- Purpose specification with use limitation (static)
- Single Data controllers and Data processors

New Style of Business

- Accountability & Transparency; Balancing Benefits & Risks
- Ubiquitous collection/free movement of data
- Legitimate Interests; Use vs. Collection (dynamic)
- Distributed Controllers; Data Supply Chain Responsibility

New Alternatives

- Ethics & Social Responsibility
- Co-regulatory Frameworks
- Organizational Accountability
- Respect for the Law

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Privacy Solutions in an Information Society

Many challenges can be solved by responsible, enforceable practices

- New Alternatives
- Ethics & Social Responsibility
- Co-regulatory Frameworks
- Organizational Accountability
- Respect for the Law

In specific cases, provides enforceable alternatives that augment traditional options

Liability  |  Accountability  |  Ethics

BCR/CBPR  |  BCR-P  |  Big Data  |  Co-regulatory Frameworks

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Motivations for an Accountability Approach

**INCREASE TRUST**  
(For consumers, clients, & regulators and therefore foster business)

**SUPPORT GLOBAL INTEROPERABILITY**  
(Then decreases regulatory complexity by creating bridges)

**ADDRESS NEW CHALLENGES**  
(Upright risks and harms consideration for new techs & new business models)

**ENSURE EFFECTIVE DATA PROTECTION**  
(From theoretical to practically demonstrated compliance)

Company Governance and Accountability Culture from “C suite” to Field level
Global regulatory environment
Challenging but moving forward...
Complex Global Environment

- National privacy or data protection law in place
- Other significant privacy laws in place
- Emerging privacy or data protection laws
- No specific Contracts
- Safe Harbor
- Model Contracts

Need « Bridges » & « Interoperability »

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Complex but rapidly evolving…

– **GDPR** *(General DP regulation)* approaching its final phase
  – Elements of **Accountability** & Major concepts (One Stop Shop, Privacy by design, EDPB,…)

– **EU – USA dialog** badly impacted by « **Snowden – Schrems** » syndrome
  – Safe harbor invalidation by EUCJ but **SH 2.0** in progress and intense work going on
  – Bill of rights / Non US citizens rights, Assistance mechanisms improvements

– **Forward path** with improved transparency, on going collaboration
  – Renewed dialog between all parties at Global level
  – Global **interoperability** and bridges in construction (BCR-CBPR, SH 2.0,…)
  – Think **beyond mere compliance** and acknowledge the place of **ethics**
  – **Paradigm change** needed **everywhere** and for everybody (Private & Public)
How to achieve effective Accountability in Global context?

A Vision of Demonstration & Governance Continuity

Open Questions:
- Controller Vs BCR Processor liability linkage?
- Intra Corp. BCR Controller Vs BCR Processor linkage?
- Inter Corp. BCR Controller Vs BCR Processor linkage?
- Inter Corp. BCR Controller Vs BCR Controller linkage
- BCR – CBPR linkage
- Others???
The path forward
For achieving the Mission…
The place of Ethics in data Protection

Holistic Human based vision required

- Responsible & Privacy Conscious Engineering
  - Technical experts with a «human» feeling

- Accountable Controller and more....
  - All along the processing chain, at all level of organizations

- Future oriented with Industry early involvement
  - Share expertise of all and maintain trusted partnership dialog

- Empowered individual within human limitations
  - The limit of understanding and consent....

*Going further than technology, business and laws...*
The Context of Data Subject Privacy

Mind-Boggling for 95% of users

- Be Fair and Transparent with User
  - Forget the “everything is free for all”

- Acknowledge the Anxiety of the unknown
  - Listen, explain and be trustworthy

- Demonstrate Benefits of this ”Brave New World”
  - And bravely address upfront its potential drawbacks

- Adequate Privacy is the “key” to growth
  - As Enabler of Digital future and not as an Obstacle

Data Subject at the center → « Prosumer »

Inspired from « Towards a new Digital Ethics »
Data, Dignity and Technology
EDPS - September 2015
The Paradigm change in practice…
… a call for trustful forward looking collaboration

Challenges and issues should be addressed by:

- **Consistent** and **Coordinated** development
  - in 3 main Dimensions
  - with an active dialog between **ALL stakeholders**:

  - **Responsible Company Governance** *(Accountability and more)*

  **Supporting Technologies** *(Access Governance, Obfuscation, Data Minimization…)*

  - **Innovative Regulatory Frameworks** *(International Standards and Tools i.e. BCR, CBPR…)*
“We cannot solve our problems with the same thinking we used when we created them.”

Albert EINSTEIN

“A pessimist sees the difficulty in every opportunity; An optimist sees the opportunity in every difficulty.”

Winston CHURCHILL

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