



20th Annual Privacy and Security Conference

GDPR: Why Should you Care?

February 6, 7 & 8, 2019

Tamara Hunter
DLA Piper (Canada) LLP

The Territorial Scope of the GDPR

- The GDPR applies to an “**establishment in the Union**” who processes personal data
- GDPR applies to “the **processing** of personal data **in the context of the activities of an establishment** of a controller or a processor **in the Union**, regardless of whether the processing takes place in the Union or not”
- What is an “establishment”?
- any real and effective activity in the EU - even fairly minimal activity - **exercised through a stable arrangement** may be sufficient to constitute an “establishment ...in the Union”
- stable arrangements could include employees or agents stationed in the EU for the purpose of assisting with online sales of goods to EU data subjects

The Territorial Scope of the GDPR

- The GDPR applies to the **processing of personal data of data subjects who are in the Union** by a controller or processor, not established in the Union, **where the processing activities are related to:**
 - (a) the **offering of goods or services**, irrespective of whether a payment of the data subject is required, **to such data subjects in the Union**; OR
 - (b) the **monitoring of their behaviour** as far as their behaviour takes place **within the European Union**

The Territorial Scope of the GDPR - Guidelines

- The European Data Protection Board issues long-awaited guidelines on the territorial scope of the GDPR
- “offering” of goods/services to EU data subjects requires some degree of **targeting**
- a non-EU entity merely having a website that is accessible in the EU will not, on its own, necessarily be sufficient to trigger a requirements for GDPR compliance
- all circumstances will be considered and the determination will be made on a case-by-case basis
- relevant factors: languages/currencies used on website, offers to ship goods to EU addresses, intentional channelling of EU traffic to website,

EDPB Guidelines - many remaining questions....

- What if a non-EU parent company receives employee p.i. from an EU-based subsidiary in order to conduct performance reviews?
- What if there is regular electronic correspondence between a Cdn parent company and an EU subsidiary for the purposes of supporting the business and product development of the parent?
- What if a Cdn entity specifically targets EU companies to offer goods or services?
- What if a Cdn statutory entity (regulatory) offers regulatory-based exams in the EU through a processor?

Questions?

Tamara L. Hunter

T. 604.643.2952

tamara.hunter@dlapiper.com