Data and Society
Digital Rights in the EU and China – Lecture 10

10/5/20

Fran Berman, Data and Society, CSCI 4370/6370
Today (10/5/20)

- Lecture – Digital Right in the EU
- Discussion – Digital Rights in China
- Student Presentations
No reading for October 8 -- Op-Ed Assignment and instructions instead
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Lecture and Discussion

- Digital rights in the EU
- Digital rights in China
European Union (EU) Digital Agenda

• Overall aim is to deliver sustainable economic and social benefits to Europeans from information and communication technologies.
  
  – Europe perceived itself as lagging behind in terms of use and deployment if IT

• EU launched Europe 2020 strategy in March 2010. Digital Agenda for Europe one of the 7 flagship initiatives of the Europe 2020 Strategy. General Data Protection Regulation (GDPR) builds on work and legislation done in this area.
EU Data Challenges they focused on

• Fragmented digital markets
  – 27 (now 26) countries in EU, much variation between content, services, and infrastructure across boarders; unification difficult

• Lack of interoperability
  – “weaknesses in standard setting”, difficulty in coordination

• Rising cybercrime and low risk of trust in networks

• Lack of investment in networks

• Insufficient research and innovation efforts

• Lack of digital literacy and skills

• Missed opportunities in addressing societal challenges
EU Digital Agenda Action Areas 1

• **Single digital market**
  – Wanted to unify telecom, services, rules, and content
  – Wanted to ensure rights and protection for consumers and businesses when doing business on-line

• **Interoperability and Standards**

• **Trust and security**
  – “Europeans will not embrace technology they do not trust – the digital age is neither ‘big brother’ nor ‘cyber wild west’.”
    (Digital Agenda for Europe, COM(2010) 245, 19.05.2010)
EU Digital Agenda Action Areas 2

• Fast and ultra fast internet access
  – Universal broadband coverage, open and neutral internet

• Research and Innovation
  – Leverage private investment and accelerate innovation
  – Increase digital literacy, skills and services

• ICT-enabled benefits for EU society
  – ICT-enabled energy, environment, health care, independent living, cultural diversity / arts, e-government, transportation.

• EU considers the privacy of communications and the protection of personal data to be fundamental rights, codified in EU law.
Europe’s GDPR (General Data Protection Regulation)

• What is GDPR?

  – Regulation that protects EU citizens wrt the processing of personal data and the free movement of their data.
  – Passed by the EU Parliament in April 2016 and implementation commenced in May 2018.
  – Does not cover personal data used in national security activities or law enforcement

• GDPR constitutes a single set of rules applies to all EU member states

• GDPR applies to any organization that collects data from EU residences or processes data from EU residents. This includes multinational companies with EU customers.
EU Citizens’ Rights Under GDPR

EU Citizens have the right to:

• information about the processing of their personal data and access to the personal data held about them;
• ask for incorrect, inaccurate or incomplete personal data to be corrected;
• request that personal data be erased when it’s no longer needed or if processing it is unlawful;
• object to the processing of their personal data for marketing purposes or on grounds relating to their particular situation;
• request the restriction of the processing of their personal data in specific cases;
• receive their personal data in a machine-readable format and send it to another controller (‘data portability’);
• request that decisions based on automated processing concerning them or significantly affecting them and based on their personal data are made by natural persons, not only by computers.
• Companies must respond to requests without undue delay and at the latest within 1 month. If the company/organisation doesn't intend to comply with a request they must state the reason why.

Rights apply across the EU, regardless of where the data is processed and where the company is established. These rights also apply when EU citizens buy goods and services from non-EU companies operating in the EU.

GDPR enforcement, sanctions, penalties

HOW WILL THE SANCTIONS MECHANISM WORK IN PRACTICE?

Suspected that a company in an EU country does not respect new data protection rules

Data Protection Authority (DPA) in that country analyses the case

The Data Protection Authority concludes that the company RESPECTS the rules

No action

e.g. suspension of data flows to a recipient in third country

e.g. reprimand to company

e.g. ban on processing of data (temporary or definitive)

The Data Protection Authority concludes that the company BREACHES the rules

The Data Protection Authority adopts a decision but does not impose a fine

Depending on infringement (*):
fine up to 4% of company’s worldwide annual turnover, or up to 20 million EUR, whichever is higher

The Data Protection Authority adopts a decision and imposes a fine

In some cases, Data Protection Authority can combine a fine with e.g. a ban or a reprimand

(*) Data Protection Authorities take into account the following elements to determine the fine:
- nature of the infringement done by company (see articles 5, 6, 8, 9 of the GDPR)
- actions taken by company to mitigate the damage suffered
- relevant previous infringement done by the same company
GDPR lawsuits

The Irish Times

Max Schrems files first cases under GDPR against Facebook and Google

European data protection bodies vow to work with Irish colleagues on complaints

British Airways Faces Class-Action Lawsuit Over Data Breach

British Airways has been threatened with a £200 million ($250 million) class action lawsuit in the UK, a Spanish non-profit specialized in

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GDPR Penalties

- **Google fined 50M euros** for **not properly disclosing to users** how data is collected across its services (including browser, Google Maps, YouTube) to present personalized advertisements (NY Times, 1/19)

- **German social network operator fined 20,000 euros** for a **data security vulnerability** (not encrypting passwords, which were hacked [but then reported expeditiously]). Smaller fine because company complying with Supervisory Authority recommendations.

- **Reprimands to Swedish companies** that have **not appointed a Data Protection Officer**.

- **5,289.00 euro fine imposed on Austrian LLC running a sports betting café for video surveillance** (parking lot, entrance). Controller was fined for insufficient processing logs, inadequate signage, insufficient justification for extended storage period.
Implications of GDPR for the U.S.

- Many U.S. firms have made changes to comply with GDPR, including revising and clarifying user terms of agreement and asking for explicit consent.

- GDPR expects a “compliance bureaucracy” (e.g. Data Protection Officer) from firms who deal with EU citizens – new infrastructure for many U.S. firms.

- Some U.S. firms have decided not to do business in the EU or to conduct mergers and acquisitions with EU companies.

- California Consumer Privacy Act the closest we have to GDPR-style digital rights protections in the U.S., not as comprehensive.

- No current cross-border data flow agreements between the U.S. and the EU (Safe Harbor, Privacy Shield now invalid).

Source: Bureau of Economic Analysis interactive data Table 3.3. https://fas.org/sgp/crs/row/IF10896.pdf
U.S. Privacy Laws evolving in a different cultural context than GDPR

- Will need to acknowledge U.S. “bottom up” legacy of privacy laws and support for the “rights” of companies vs. EU’s “top down” approach and support for the rights of individuals

- The U.S. will need to establish a compliance and enforcement structure that works for the U.S.

- Laws will need to work with the U.S. Bill of Rights

China’s social credit system

- Chinese **Social Credit System** is a *national reputation system* being developed by the Chinese Communist Party (CCP), under CCP General Secretary Xi Jinping's administration.

- By 2020, it is intended to standardize the assessment of citizens' and businesses' economic and social reputation, or 'Social Credit'.

- The social credit initiative calls for the establishments of unified record system for individuals, businesses and the government to be tracked and evaluated for trustworthiness.
  - Nationwide regulatory methods have been focused primarily on “whitelisting” and “blacklisting”.

- Credit system closely related to China’s mass surveillance systems, which use facial recognition, big data analysis technology, AI, and other digital techniques.

- **System leverages close relationship between public and private sector** in China.
Rewards and Penalties

- Citizens may experience rewards or penalties based on their economic and personal behavior.

- Reports of untrustworthy behavior include fraudulent and dishonest financial behavior, playing loud music, eating in rapid transit, violating traffic rules, making reservations at restaurants and hotels and not showing up, failing to correctly sort personal waste, fraudulently using other people’s public transportation ID cards, etc.

- Trustworthy behaviors include donating blood, donating to charity, volunteering for community services, etc.

Punishments may include:
- Denial of high speed rail tickets
- Ban of children of untrustworthy parents from attending private schools or university
- Appearance on a public blacklist

Rewards may include:
- Easier access to loans and jobs
- Priority during bureaucratic paperwork
- Better access to better goods and services
China has multiple Social Credit Systems

- **4 current types of credit systems** – not interconnected seamlessly but some interconnections
  - **Judicial system** – blacklist system for discredited individuals and organizations (debtors).
    - Public-private sector coordination (e.g. which private sector companies deduct credit points from people who defaulted on court fines)
  - **Financial system** – users with good scores offered advantages, bad scores disadvantaged
    - Voluntary pilots testing social credit experiments for state
    - Some pilots using big data analysis and AI to create scores
  - **Local Government** – various cities piloting credit sharing platforms, data sharing efforts with other cities, rule-based systems
  - **Commercial credit-sharing system** – goal is for social credit system to serve as a market regulation mechanism promoting company compliance with government policies and regulations and promote self restraint and trust in the Chinese market.

- Close relationship and cooperation between public and private sector.
- Not clear whether national system will be an ecosystem of various scores and blacklists by government agencies and private companies or unified
Not so far from current U.S. practice?

- Close in some respects to U.S. practice: *people with higher scores get more social and financial breaks while people with lower scores are penalized:*
  - Not illegal for employers to deny an applicant a job offer based on information in their credit report.
  - People with poor credit may be turned down for housing. Historical barriers for people of color pursuing homeownership.
  - People with bad credit pay more for car insurance.
China’s social credit system: Promotion of Social Behavior or Undue Surveillance and Control?

- **Wikipedia:** “Supporters of the Credit System claim that the system helps to regulate social behavior, improve the "trustworthiness" which includes paying taxes and bills on time and promote traditional moral values.

- **Critics** of the system claim that it oversteps the rule of law and infringes the legal rights of residents and organizations, especially the right to reputation, the right to privacy as well as personal dignity, and that the system may be a tool for comprehensive government surveillance and for suppression of dissent from the Communist Party of China.”

In 2014, the Chinese government laid out a plan to "extend financial credit scoring systems — commonly used by financial institutions in the United States — to other areas of government regulation, from contract
Lecture 10 References (not already on slides)


- “The Complicated Truth about China’s Social Credit System,” Wired, https://www.wired.co.uk/article/china-social-credit-system-explained

- “Spend Frivolously and be penalized under China’s new social credit system”, Vox, https://www.vox.com/the-goods/2018/11/2/18057450/china-social-credit-score-spend-frivolously-video-games

- China’s social credit system planning outline, https://chinacopyrightandmedia.wordpress.com/2014/06/14/planning-outline-for-the-construction-of-a-social-credit-system-2014-2020/

- “Is UltraFICO score good or bad for consumers?”, USN&WR, https://creditcards.usnews.com/articles/is-the-ultrafico-score-good-or-bad-for-consumers

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Presentations
Presentations for October 8


Presentations for October 15

- “Democrats are slight favorites to take back the Senate”, 538, https://fivethirtyeight.com/features/democrats-are-slight-favorites-to-take-back-the-senate/ (Zachary S.)

Need Volunteers – Presentations for October 19


• “Some states have embraced on-line voting. It’s a huge risk.”, Politico, https://www.politico.com/news/2020/06/08/online-voting-304013 (Xilin)
Presentations for Today
