

# Data privacy

Legislative changes and practical strategies

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“ I keep saying that the sexiest job in the next 10 years will be statisticians, and I’m not kidding ”

Hal Varian  
Chief Economist at Google

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Data issues are a really big deal.



Image credit: [Eliot](#)

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And data issues are everywhere!

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Image credit: [Digital Trends](#)

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## Legislative Changes

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EU's GDPR: the first major privacy shift

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Image credit: [Exhere.com](#)

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## Key responsibilities (GDPR articles 28-36)

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### Controller must

- ❑ have **formal contract** with processors
- ❑ implement **adequate security**;
- ❑ not use sub Processors without consent of the Controller;
- ❑ **cooperate** with the relevant Data Protection Authorities in the event of an enquiry;
- ❑ **report data breaches without delay (72hr)**;
- ❑ **keep records** of all processing activities;
- ❑ comply with EU **cross-border data transfer rules**;
- ❑ impose contract on processors
- ❑ **flow down obligations to processors**

### Processor must

- ❑ follow **controller's instructions**
- ❑ implement **adequate security**
- ❑ **Report data breaches without delay**
- ❑ assist the Controller in **managing the consequences of data breaches**
- ❑ **keep records** of all categories of processing activities
- ❑ **flow down obligations to sub-processors**
- ❑ appoint a **Data Protection Officer** under certain circumstances
- ❑ **help the Controller comply** with data subjects rights

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## The rest of the world:

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Image credit: [Pbase.com](https://www.pbase.com/)

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## United States federal government:

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Image credit: [DeviantArt](https://www.deviantart.com/)

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Practical Strategies

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First step:  
get in the weeds.  
Ask questions. Lots of questions.

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Who

Assess business strategy and current customers.

How

What type of data do you have?  
How do you protect it?

Think

Determine risk tolerance and strategy

Do

Implement remediation and compliance plan.

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Next up:  
big ticket legal stuff.

Pay attention to the details (and ask more questions).



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Legal issues to consider

Defining data

Scope of use

Access

Consent

Security terms

- Definition should cover and protect confidential information and personal information.
- Description should reflect business goals
- Define how recipient can use data (eg, sale or license for set purpose)
- Is the discloser identifiable through the recipient's use?
- Define how recipient receives your data, any technical specs, and any other implementation details
- Who is responsible for obtaining consents?
- What security terms need to be in place?

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Data ownership sample language

Vendor acknowledges that Customer is the **exclusive owner** of all right, title, and interest in and to the Data (including any **modifications, improvements, or derivative works**). Vendor **may only** use the Data to **perform its obligations** under this Agreement unless Customer provides express written consent with **intent to modify this section**. Vendor will not use, disclose, sell, assign, loan, lease, dispose of, encumber, or otherwise **commercially exploit** any Data, nor will Vendor authorize any third party to do so. Upon termination or expiration of this Agreement or Customer's written request, Vendor will **promptly return all Data** to Customer at no charge and in the same format as provided by Customer or as in an alternate format as reasonably requested by Customer.

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## Personal information sample definition

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Personal information means (i) any information about an **identified or identifiable individual**; or (ii) information that is not specifically about an identifiable individual but, when **combined** with other information, **may** identify an individual. Personal Information includes names, email addresses, postal addresses, telephone numbers, government identification numbers, financial account numbers, payment card information, credit report information, biometric information, online identifiers (including IP addresses and cookie identifiers), network and hardware identifiers, and geolocation information. In this Agreement, "Personal Information" **includes 'personal data'** within the meaning of the EU Data Protection Laws.

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## Legal issues to consider

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### Termination

- Consider the term and treatment of data (and modifications) upon termination

### Reps and warranties

- What representations and warranties are appropriate?
- Do you want to rep and warrant to comply with law? If so, are there any loopholes (eg, HIPAA)?

### Indemnity

- What is each party responsible to defend and who is in the best position to defend?

### Liability cap

- What is the maximum liability? Consider supercaps.

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# Thank You!

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