


Data Governance in the age of Brexit



*I may be a pill-popping, jet fuel sniffing,
gin-soaked narcissist...*

DATA PROTECTION BACKGROUND

MAIN POINTS COVERED

- Historically the UK has generally been a leader in data governance
- Complexity of pace while securing trust
- Introduction of GDPR in 2018 ensured a consistent and collaborative approach to data governance
- Overhauled the data protection act 1998

Challenge:

**Keeping Governance up to
date and relevant with the
pace of development
while embedding trust and
security**

FACTS:

23%

OF TOTAL EU DATA
COMPLAINTS AND
BREACHES WHERE
BASED IN UK

83%

UK IT LEADERS
REPORTED DATA
CENTRES ARE IN
EUROPE

34%

PEOPLE HAVE HIGH
TRUST IN COMPANIES
STORING THEIR DATA

Ico

EXPECTED TO
DOUBLE IN SIZE TO
BETTER HANDLE
THE OFF SHOTS
OF GDPR

90%

UK IT STRATEGISTS
SUPPORT EU'S
REGULATIONS

GDPR

open, fair, diverse,
democratic, and confident

AIM: to be a leading role model for a society
empowered by data to make better decisions – in
business and the public sector.

... it's not perfect!



ON IT'S 2 YEAR ANNIVERSARY EU ADMITS:

- Particular burden felt on SME's (cost of compliance)
- Lack of clarity by those developing new tech
- Challenging when infringements encompass multiple territories
- Lack on consistency across member states (eg. minors)



HOWEVER...

**INDIVIDUALS ACROSS MEMBER
STATES HAVE SEEN
CONSIDERABLE GROWTH IN
CONFIDENCE, FELT MORE
EMPOWERED AND AWARE OF
THEIR RIGHTS IN THE WAKE OF
GDPR**

Also noted how it has greatly facilitated
implementation of tracing apps in wake of the
pandemic.

LESSER KNOWN GDPR FACTS

EU-JAPAN DECISION

Created largest free data flows in the world with strong protection guarantees

71% HAVE HEARD ABOUT GDPR

of people in the EU have heard of their national data protection authority

USED THE WORLD OVER

GDPR has been used the world over not only to trade with EU but setting the benchmark. EU continues to lead on data governance

4.3 MILLION CONSULTATIONS

with citizens and businesses on the EU commissions online portal in last 2 years



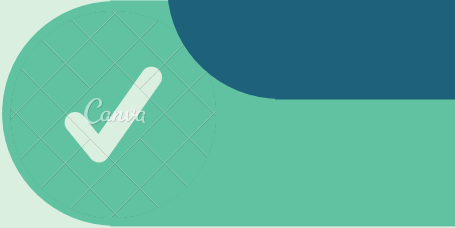
BRITISH AIRWAYS

£183m breach for 500,000 customer, including payment details



MARRIOTT

30 million customers details compromised, 7m in the UK. ICO proposing a £99.2m fine



CAMBRIDGE ANALYTICA

Hopefully other presentations will dig a little deeper on this



FACEBOOK, WHATSAPP, GOOGLE

Although not in UK there has been a magnitude of breeches in Ireland where many US companies have their EU HQ.



**VALUE
OF
DATA**



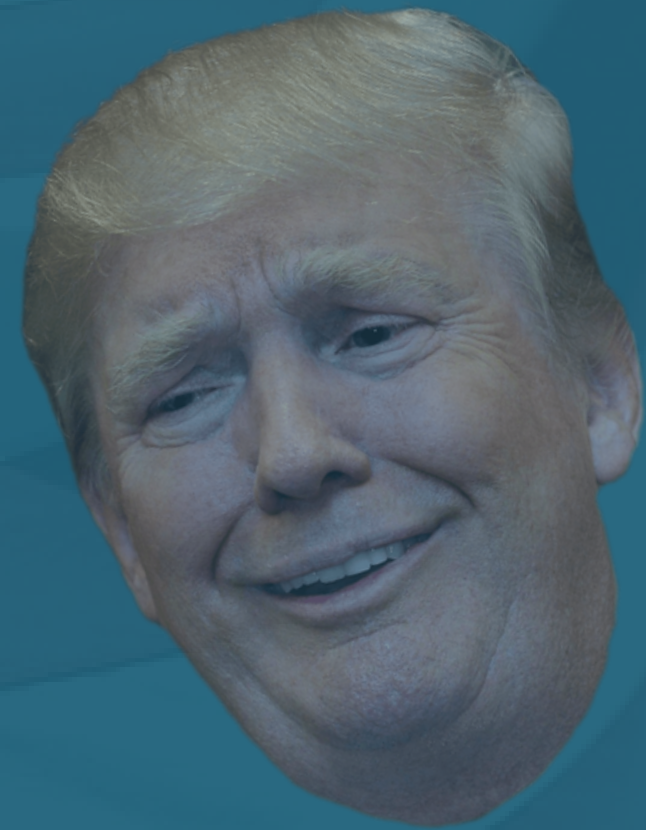
**FINES
€20M OR 4%
OF REVENUE**



TALK OF AN AMERICAN STYLE AGREEMENT

issues:

- Safe Harbour Agreement ruled as too weak in 2015
- Replaced with Privacy Shield.....



PRIVACY SHIELD: THE UNITED STATES USES A SECTORAL APPROACH THAT RELIES ON A MIX OF LEGISLATION, REGULATION, AND SELF-REGULATION

EU-US data transfers at critical risk as ECJ invalidates Privacy Shield

US-EU data sharing deal Privacy Shield struck down by European court

📅 16-07-2020 (updated: 📅 16-07-2020)

ECJ rules main mechanism for transferring information fails to protect EU citizens' privacy



WHY?

- Gravity and nature — The overall picture of the infringement. What happened, how it happened, why it happened, the number of people affected, the damage they suffered, and how long it took to resolve.
- Intention — Whether the infringement was intentional or the result of negligence.
- Mitigation — Whether the firm took any actions to mitigate the damage suffered by people affected by the infringement.
- Precautionary measures — The amount of technical and organizational preparation the firm had previously implemented to be in compliance with the GDPR.
- History — Any relevant previous infringements, including infringements under the Data Protection Directive (not just the GDPR), as well as compliance with past administrative corrective actions under the GDPR.
- Cooperation — Whether the firm cooperated with the supervisory authority to discover and remedy the infringement.
- Data category — What type of personal data the infringement affects.
- Notification — Whether the firm, or a designated third party, proactively reported the infringement to the supervisory authority.
- Certification — Whether the firm followed approved codes of conduct or was previously certified.
- Aggravating/mitigating factors — Any other issues arising from circumstances of the case, including financial benefits gained or losses avoided as a result of the infringement.

.....**BASICALLY EVERYTHING**

GOING FORWARD (kind of)

ICO INTENTIONS

WELL PLACED BUT CURRENTLY VAGUE...
LOTS OF WE "EXPECT", "SHOULD", "COULD" ETC

- cyber security;
- AI, big data and machine learning;
- web and cross-device tracking for marketing purposes;
- children's privacy;
- use of surveillance and facial recognition technology;
- data broking;
- the use of personal information in political campaigns; and
- freedom of information compliance.

FEW CONVICTIONS...

Many of the headlining infractions are yet to be finalised and the ICO has issued minimal fines to date BA & Marriott.

Although penalties do appear to be ramping up (only 61 listed to date)

HOME OFFICE

breached GDPR guidelines over 100 times from March 30 to Aug 31 2019

WHERE ARE WE NOW?

WHERE TO NOW?

- to play with Europe we will need to play by their rules but have no input to their creation
- If the incentive to report a breach is outweighed by excessive fines, businesses could be deterred from reporting data breaches.
- to take advantage of our independent position and attract foreign investment we could see the decline of implementations
- murky position will make it harder for individuals and businesses to know their rights
- ICO's approach to GDPR, their growth doesn't inspire hope for post Brexit.
- lack of being held to a higher account (ECJ) means that enforcement is likely to be at hands of government and their agenda, making the whole thing political and dangerous.

THE FUTURE



REFERENCES:

https://ec.europa.eu/info/sites/info/files/communication-european-strategy-data19feb2020_en.pdf

<https://www.datagovernanceaus.com.au/news-and-articles/2016-07-07-brexit-and-data-governance-where-to-now.html>

<https://ico.org.uk/media/for-organisations/documents/2617966/information-rights-and-eot-faqs.pdf>

<https://www.euractiv.com/section/digital/news/eu-us-data-transfers-at-critical-risk-as-ecj-invalidates-privacy-shield/>

<https://www.ft.com/content/b7a713e0-fe7e-4893-927c-7e90a1dd56d9>

<https://gdpr.eu/fines/>

<https://www.ft.com/content/66668ba9-706a-483d-b24a-18cfbca142bf>