

Protecting consumers' data
in the digital world:
advocating fairness by
design

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How does the law protect your data?

Consumer Law

Consumer Rights Directive
Unfair Commercial Practices Directive
Other aspects of the acquis

Data Protection

GDPR (General Data Protection Regulation)

Human Rights

European Convention of Human Rights and the
European Charter of fundamental rights.

Main use of personal data in a commercial context -

Targeted advertising; Price discrimination; 'Free' websites & apps; risk profiling (e.g. credit & social scoring for banking and insurance); Dark patterns, etc.

Competition Law

Article 101 and 102 TFEU

Public enforcement

Private enforcement

Data protection as a multi-regulatory concern in the digital world



Main Obstacles to the effectiveness of the law

Old standards do not fit new paradigms

Differences in social norms and values

Legal systems based around different visions of the State and control of business and protection of consumers and citizens.

Governments

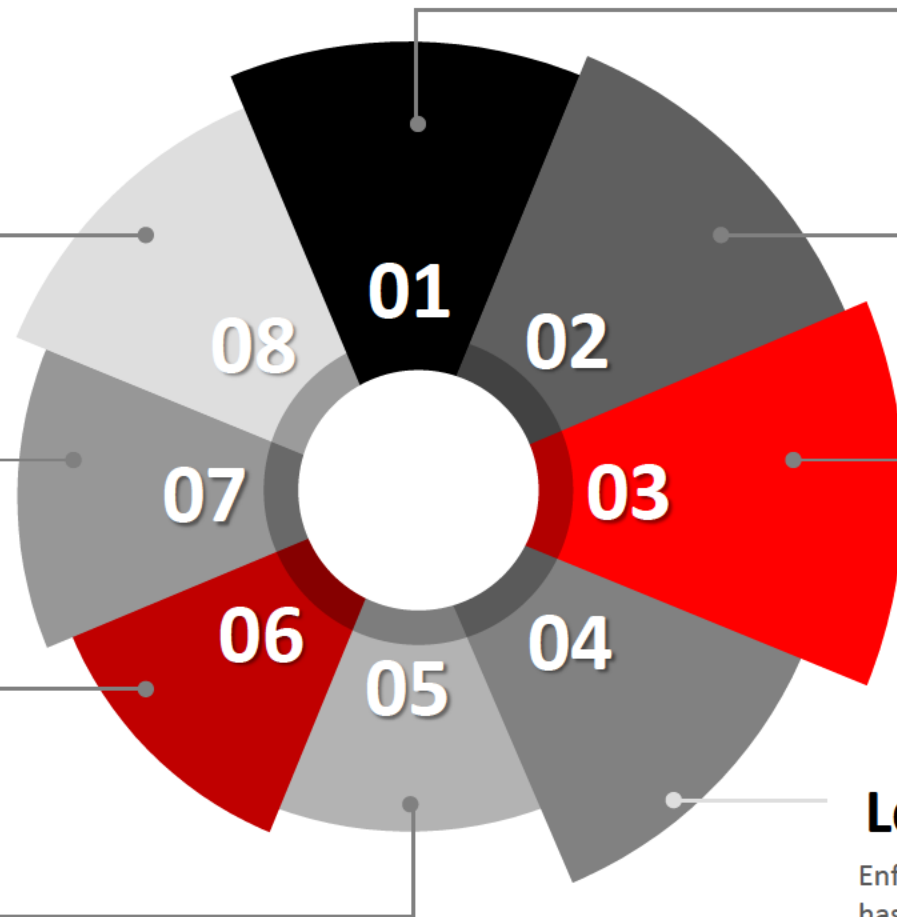
e.g. Third Party Doctrine in the USA; use of Social Media as a way to monitor user activity.

Users

Different groups of users may have different thresholds or level of understanding of what constitute privacy; or what is done with their data

Lack of transparency

On collecting practices and on motivations behind data collection #darkpatterns



Territoriality

Laws still organized along geographical lines and the need for a connection with a State for its laws or courts to have jurisdiction

Digital changes the way data needs protecting

Fast transition from paper record to digital lives creates challenges for regulators – technology = greater scale and speed of collection

Market Structures

Big Businesses build on neo-classical economic models seeking to maximise shareholders' value. Concentration of market powers in a small number of tech giants

Legal systems limitations

Enforcement of rights (private or public) takes time and has a cost not always directly proportional with the illegal use of data
Legal tools not yet adapted to machine learning

How to fix the law?



A GENERAL AND POSITIVE OBLIGATION TO TRADE FAIRLY?

Siciliani, Riefa, Gamper, *Consumer Theories of Harm – an economic approach to consumer enforcement and policy making* (Hart Publishing 2019)

An impactful solution is to rely on a more systematic enforcement of consumer rights (through the general clause of the Unfair Trading Regulations 2008) to force changes in market behaviors and structures. It is about using economics to prioritize intervention via one of the available legal regimes. **REVERSING EXPECTATIONS. BUSINESS BEHAVE** rather than **CONSUMER BEWARE**



PREPARE FOR THE FUTURE

Anticipate how to control AI
Regulatory framework for PIMS (Personal Information Management Services) – a new business model enabling consumers to monetise their data and/or manage its use?



Paradigm shifts required to protect consumers' data in the digital world



DEVELOP GLOBAL SOLUTIONS

Most data exchanges driven by e-commerce and take place across borders. GDPR transnational reach model?

CHANGES IN MARKET STRUCTURES

Competition Law –
Current market structures favour 'race to the bottom', whereby to remain competitive large amounts of data on consumers needs to be collected, used and/ or traded.
*Change to model where the way privacy is treated becomes a commercial argument – open competition on data privacy
#privacybydesign – adopt models where privacy is the default and opt-in to share is the industry standard.

Thank you for your
attention

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