



PROGRAM MATERIALS

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Bracing for the “Terrible 2’s”? GDPR, Almost Two Years In

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Bracing for the "Terrible 2's"? GDPR, Almost Two Years In



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Wherefore art Thou GDPR – No Enforcement?



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No Enforcement?

"we must concede that we have a huge problem with the enforcement of cross border processing especially by globally acting companies...It is absolutely unsatisfactory to see that the biggest alleged data protection violations ...with millions of individuals [concerned] are far away from being sanctioned." [German DPA]



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A low-angle, upward-looking photograph of a grand classical building, likely a government or institutional structure. The image features several tall, fluted columns supporting a heavy entablature. Above the columns, a series of statues in classical attire are visible, some seated and some standing. The sky is overcast with grey clouds. A green semi-transparent banner is overlaid on the upper left portion of the image, containing the text "No Enforcement?".

No Enforcement?

"It's going to take as long as it takes."
[Helen Dixon]



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No Enforcement?

- France CNIL: 50 Mil fine (Google)

BUT:

- Ireland DPC: No enforcement actions
- Luxembourg: No enforcement actions
- UK ICO: Notices of fines- deferred



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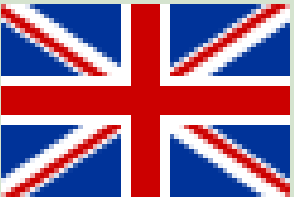
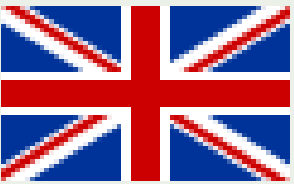
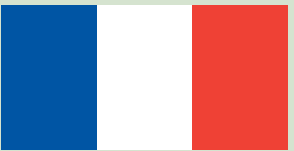


Wherefore art Thou GDPR – Enforcement!






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Enforcement!




Country	Fine/ Remedy	Violation
	EUR 204,600,000 (notice of intent)	User traffic to the British Airways website being diverted to a fraudulent site. 500,000 individuals impacted (Art 32)
	EUR 110,390,200 (notice of intent)	A variety of personal data contained in approximately 339 million guest records of Marriott International globally were exposed by the incident, of which around 30 million were from EU (Art 32)
	EUR 50,000,000	Lack of transparency in the creation of a Google account during the configuration of a mobile phone using the Android operating system. (art 5, 6, 11, 13)



Enforcement!

Country	Fine/ Remedy	Violation
	EUR 27,800,000	Unsolicited commercial communications made by TIM without the consent (Art 5, 6, 17, 21)
	EUR 18,000,000	The Austrian Post had created profiles of more than three million Austrians, which included information about their home addresses, personal preferences, habits and possible party affinity - which were subsequently resold, for example to political parties and companies (Art 5)
	EUR 14,500,000	Deutsche Wohnen SE used an archiving system for the storage of personal data of tenants that did not provide for the possibility of removing data that was no longer required. Personal data of tenants were stored without checking whether storage was permissible or even necessary (Art 5)

Enforcement!

Country	Fine/ Remedy	Violation
	EUR 9,550,000	1&1 Telecom GmbH caller could obtain extensive information on personal customer data from the company's customer service department simply by entering a customer's name and date of birth (Art 32)
	EUR 8,500,000	Eni Gas e Luce unlawful processing of personal data in the context of advertising activities and activation of unsolicited contracts (Art 5, 6, 17 21)
	EUR 7,000,000	Google failing to adequately comply with its obligations regarding the right of data subjects to have search results removed from the results list. (art 5, 6, 17)





How the Cookie Crumbles



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Cookies



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Cookies: Common Ground

- technology that stores or accesses information on device (e.g., pixels, SDK)
- specific, freely given and unambiguous consent
- terms and conditions not sufficient



Cookies: Common Ground

- Consent for each purpose
- Layers
- Identify all vendors
- IAB TCF 2.0?



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Cookies: Divergence

- Cookie walls
- Lawful basis
- Options to users
- Retention period



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Overanalyze: Analytics in the Crossfire



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Overanalyze: Analytics in the Crossfire

- Do analytics cookies require consent?
- 200,000 complaints with DPAs in Germany



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Extraterritorial



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Extraterritorial

- GDPR can apply extraterritorially to some streams of data processing and not others
- Targeting the EU



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Extraterritorial

- Applies to many non-European Union (EU) data processors
- EU Representative



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A Class of Their Own: Class Actions and Civil Litigation



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Individual Civil Litigation:

Ongoing and rapidly growing, based on national tort laws

Collective Actions (Verbandsklagen):

Ongoing and growing, based on national consumer protection laws

Class Actions: More to come (EU directive on representative actions for the protection of consumers)

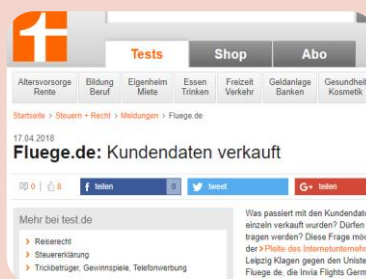




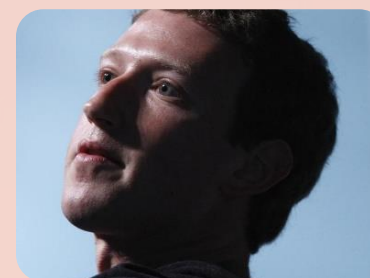
Action for the erasure of 500,000 customers' data held by a telecoms provider, which had been collected and passed on based on consent invalid under data protection law (binding ruling)



Action against 400,000 customers' compulsory membership in a bonus programme of a regional savings bank (currently 2nd instance)



Actions(s) against the sale of 194 million customers' data held by one of Germany's largest flight portals following its insolvency (currently 2nd instance)



Action against Facebook for operating fan pages in violation of transparency rules under Art. 26 GDPR (currently 1st instance)



Several actions against media companies for invasive, unjustified web tracking and violation of information obligations (currently 1st instance)

Making headlines: Selected collective actions, 2017–2020



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You'll Never Know Me: Anonymization and Pseudonymization



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Anonymization and Pseudonymization

You'll Never Know Me: Anonymization and Pseudonymization

- Conceptions and Misconceptions
- Technologies
- Technical & Organizational Measures
- Anonymization vs. Deletion



A silver spinning top is balanced on a light-colored wooden surface. The spinning top is a four-pointed star shape with a central point and a small stem at the top. It is positioned in the center of the frame, with a green banner overlaid across its middle.

A Delicate Balance: Legitimate Interest Analysis



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Legitimate Interest Analysis

A Delicate Balance: Legitimate Interest Analysis

- CJEU's "3-Step-Test"
- What does "legitimate" mean and how far does it go?
- What is "direct marketing"?



High Impact: DPIA's



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DPIA's

High Impact: DPIA's

- Why they are important?
- Why they are so laborious?
- What should be done?



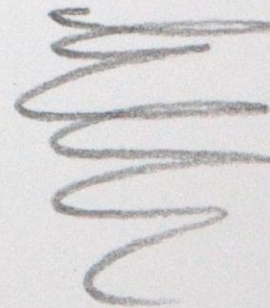
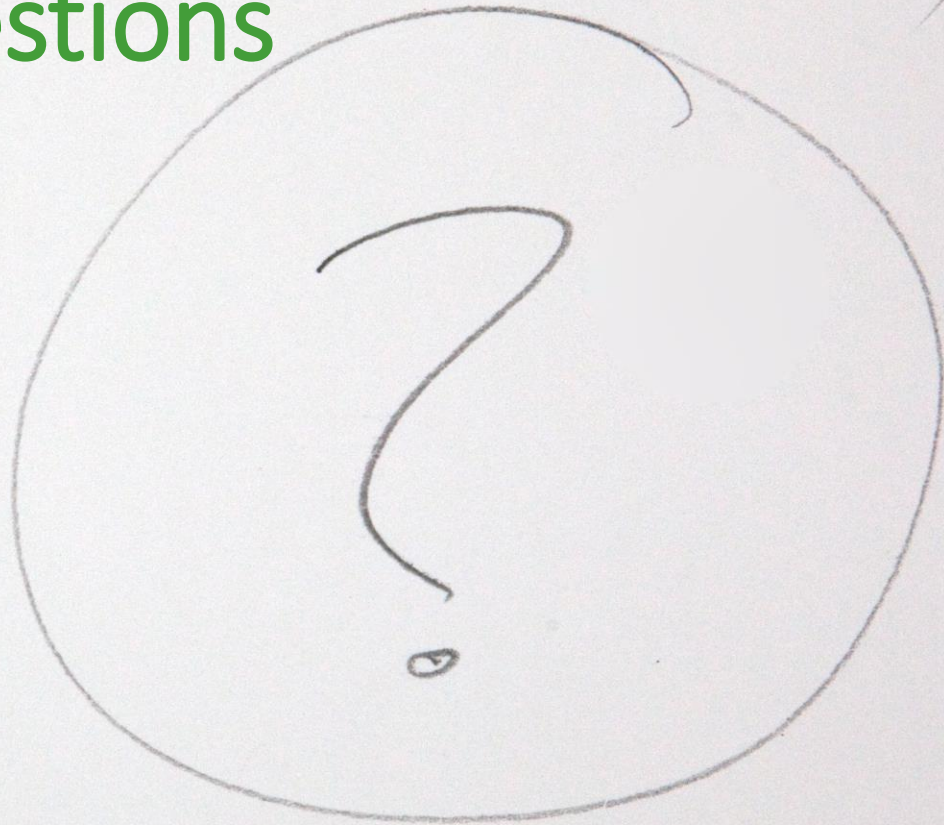
Takeaways and Questions



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ENGLAND

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