

Data has no borders: can privacy and globalisation go hand in hand?

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Background

1. Data and privacy are growing issues to the public and business.
2. For business, if the data protection environment becomes unreasonably oppressive, or costly and administratively burdensome then it is the customer who will lose out; both in terms of poorer service and in terms of higher process costs. Needless to say, business will be less efficient and economic harm would follow.
3. People share their personal data all the time through online purchases etc but want that data protected. Data Security should be distinguished from data *use*.

Privacy and data

4. It is fairly safe to assume that people want to know that use of their data does not cause them damage. People's names are flying around the internet all the time. Every time a name is typed into a search engine it travels the world! Nobody appears to be bothered about that. This is because people very rarely suffer harm as a result of a Google search, for example. Therefore, it is not use, per se, that people object to but *damaging* use. That is where the law needs to be modified so that damaging use is prohibited, not merely use.
5. The EU is examining whether one should have the right to disappear. The idea that you can *pretend* that something never happened is about as ludicrous as the effectiveness of super injunctions in a modern, internet world. It has echoes of Orwell's 1984 where the State rewrites history.
6. There is a need to keep proper records, evidence etc. and this would make the practical implementation of the EU proposal almost impossible to achieve.

Frequently asked questions about privacy

7. Can privacy be protected in a globalised trading world? No, is the simple answer. Unless we censor the news, the internet, freedom of speech and parliamentary immunity, of course. If a person's right to privacy has been improperly breached, damages will be the remedy.
8. The "Spycatcher" case already proved that injunctions to prevent the spread of information were becoming increasingly meaningless in a global world. It should be noted that was before the internet and "Tweeting".
9. Is it better to let people control their data and remove any other restrictions? No. This is not practical as others have access to such data and the need to use it.

Proposals

10. The processing of personal data (which is a slightly different question to the question of privacy) should be subject to proper restriction but those restrictions should be based on outcomes and not process.
11. For example, the law should be rewritten so that it is permissive not prohibitive; i.e. you may process personal data as long as you do not cause financial, physical, reputational, privacy or other damage to the data subject.
12. If you do, you are liable for those damages.
13. If you don't the processing is permitted.
14. This is, in effect, the way that Internet Service providers are currently treated by the law. There is no reason why it should not apply to everyone.