

Rolf H. Weber · Dominic Staiger

# Transatlantic Data Protection in Practice

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## Foreword

Information technology and communication tools have fundamentally changed the way in which humans as well as businesses operate and interact. The caused challenges include automated data processing between machines as well as artificial and swarm intelligence being able to draw conclusions from a wide range of data.

The global data flows are exposed to many different legal frameworks of sovereign nation states. The lack of legal interoperability leading to a fragmentation of the normative environment jeopardizes the success of the technologically possible information exchanges. This assessment is particularly relevant in the field of data protection law. The different levels of data privacy rules in the European Union and in the United States of America have already provoked many political and legal debates.

This publication analyses the potential conflicts in the light of their risks to enterprises and the way in which US-based cloud providers react to the uncertainties of the applicable data protection rules. Furthermore, the study provides recommendations on how to navigate the practical challenges and limitations in this field based on a lack of awareness related to the precise consequences of the processing operations within an enterprise in view of the given data protection framework.

The legal considerations are relying on an empirical investigation done with US cloud providers. The qualitative interviews conducted during July and August 2016 in California were set up in an open format with an introductory phase and a subsequent focus on data protection and data security issues based on the experience of the interview partner. This (otherwise not chosen) combination of empirical and normative work allows the development of new insights into the difficult application of data privacy laws.

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Zurich, in February 2017

Rolf H. Weber / Dominic N. Staiger

# Table of Contents

<b>Foreword</b> .....	<b>V</b>
<b>Table of Contents</b> .....	<b>VII</b>
<b>List of Abbreviations</b> .....	<b>XIII</b>
<b>Bibliography</b> .....	<b>XVII</b>
I. Books, Journals and Website Materials	XVII
II. Statutes	XXXI
<b>Part 1: Introduction</b> .....	<b>1</b>
<b>A. Trans-Atlantic Privacy Challenges</b> .....	<b>1</b>
<b>B. Characteristics of the Cloud Environment</b> .....	<b>3</b>
I. Overview	3
II. Cloud Governance Approaches	6
III. Political Context of Regulating the Cloud	9
<b>C. Functions of Technology and Law in the Context of Privacy</b> .....	<b>10</b>
I. Technical Solutions	10
II. Flexible Laws and Regulations	13
<b>Part 2: Legal and Regulatory Framework</b> .....	<b>16</b>
<b>A. Regulatory Concepts for Data Privacy</b> .....	<b>16</b>
I. Overview of Influencing Factors	16
II. Technology-Based Model	17
III. Market Forces	19
IV. Behavioral Factors	19
<b>B. Data Privacy as Policy and Regulatory Topic in the EU</b> .....	<b>20</b>
I. Tensions between Fundamental Rights and Regulatory Frameworks	20
II. EU Digital Market Strategy	22
III. Data Protection Law Reform	24

<b>C. Principles of Data Protection and Privacy in the US .....</b>	<b>26</b>
I. Evolution of Data Protection in the US	26
II. Current Data Protection Framework	27
<b>D. EU Data Protection Framework .....</b>	<b>30</b>
I. Processing Authorization	31
II. Processor v. Controller	32
III. Data Transfers Outside the EU	35
IV. Information Requirements	37
V. Fines and Penalties	38
<b>E. US Data Protection Framework .....</b>	<b>39</b>
I. Introduction	39
II. Privacy Act and Wiretap Act	41
1. Privacy Act .....	41
2. Wiretap Act .....	41
III. US Surveillance Framework	42
1. Patriot Act.....	42
2. Foreign Intelligence Surveillance Act .....	43
3. Cybersecurity Information Sharing Act (CISA) .....	46
4. US Freedom Act.....	47
5. Use of Metadata .....	51
6. Use of Big Data .....	52
IV. Sarbanes-Oxley Act	53
V. Selected State Statutes	54
<b>F. International Trade Law and Privacy .....</b>	<b>55</b>
I. EU Data Protection Law and GATS	55
1. General WTO Law Principles .....	55
2. Grounds for Justification of Trade-Restricting Measures .....	57
II. Privacy-Related Plurilateral and Regional Trade Agreements	59



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**Part 3: Practical Implementation of Data Protection Environment ..... 62**
**A. Industry Feedback on Data Protection and Security**

<b>Challenges.....</b>	<b>62</b>
I. Interview Set-up	62
II. Cloud Trends and Challenges	63
1. Introduction to Cloud Services.....	64
2. Costs in the Cloud .....	64
3. Latency in the Cloud.....	65
4. Identifying Personal Data.....	66
5. Security Risks .....	66
III. Unique Challenges of Start-Ups	67
1. Key Challenge for Start-Ups .....	67
2. Entering the EU Market.....	68
IV. Processing of Sector-Specific Health Data	69

**B. Business to Business in the Cloud ..... 71**

I. Current Developments	71
1. New Technology.....	71
2. Contractual Innovation.....	72
3. Challenges for Cloud Vendors .....	73
4. Business Consultation Trends .....	73
5. Transatlantic Cloud Data Centers .....	74
II. Ancillary Business Services	74
1. SaaS Human Resource Tools .....	75
2. SaaS Application Monitoring.....	77
3. Customer Success in the Cloud .....	79
4. SaaS Legal Services and Discovery .....	80
4.1 SaaS Attorney Tools .....	81
4.2 Discovery in the Cloud .....	83
4.3 Trends Identified by Law Firms .....	85
5. SaaS Communication Tools .....	86
6. Extension: Public Services in the Cloud .....	88

<b>C. Business to Consumer in the Cloud .....</b>	<b>88</b>
I. Data Protection Implications .....	89
II. Consumer Protection .....	90
<b>D. Big Data Analytics Challenges.....</b>	<b>91</b>
I. Research Issues .....	92
1. University and Business Cooperation .....	92
2. Big Data Research.....	92
3. Anonymization and Big Data .....	93
II. Regulatory Gap .....	95
III. Behavioral Targeting .....	95
IV. Government Data Release .....	97
1. United States .....	97
1.1 Government Data Collection .....	97
1.2 Freedom of Information.....	98
1.3 Open Access .....	99
2. European Union .....	100
<b>E. Discrimination Based on Data .....</b>	<b>101</b>
I. Big Data .....	101
1. Key Elements .....	101
2. Credit Scoring .....	103
3. Employment.....	103
4. Higher Education .....	104
5. Criminal Justice.....	105
II. Use of Personal Data in Big Data Processing .....	106
<b>F. Compliance and Risk Mitigating Measures .....</b>	<b>109</b>
I. Privacy Management Programs .....	110
1. Achieving Data Protection Compliance .....	110
2. Privacy Operational Life Cycle.....	112
3. Communication and Training .....	113
4. Response to Data Protection Issues.....	114
5. Compliance Toolbox .....	115
6. Contractual Measures .....	116
II. Non-disclosure Agreements and Internal Protocols .....	118

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III. Updates	118
IV. Insurance	118
<b>G. Ensuring Data Security</b> .....	<b>120</b>
I. General Measures	121
II. Security and the Internet of Things	125
III. Labor Law Challenges of IT Sourcing	131
<b>Part 4: Outlook on Future Developments</b> .....	<b>134</b>
<b>A. Shaping Global Privacy</b> .....	<b>134</b>
<b>B. Regulatory Efforts</b> .....	<b>136</b>
<b>Part 5: Annexes</b> .....	<b>138</b>
<b>A. Comparative Table – Government Access</b> .....	<b>138</b>
<b>B. Interview Summaries</b> .....	<b>140</b>
I. Interview 1 (SaaS)	140
II. Interview 2 (Consulting)	143
III. Interview 3 (IT Security)	144
IV. Interview 4 (SaaS)	145
V. Interview 5 (Consulting)	148
VI. Interview 6 (SaaS)	150
VII. Interview 7 (SaaS)	153
VIII. Interview 8 (CaaS)	156
IX. Interview 9 (IT Security)	159
X. Interview 10 (SaaS)	160
XI. Interview 11 (Consulting & SaaS Development)	161

## List of Abbreviations

ADA	Americans with Disabilities Act
AI	Artificial Intelligence
AJWH	Asian Journal for WTO and International Health Law and Policy
APEC	Asia-Pacific Economic Cooperation
APP	Australian Privacy Principles
AUP	Accepted Use Policies
AÜG	Gesetz zur Regelung der Arbeitnehmerüberlas- sung
AWS	Amazon Web Services
B2B	Business to Business
BAG	Bundesarbeitsgericht
BCR	Binding Corporate Rules
CaaS	Communication as a Service
CBPR	Cross Border Privacy Rules
CFEU	Charter of the Fundamental Rights of the Euro- pean Union
CIA	Central Intelligence Agency
CISA	Cybersecurity Information Sharing Act
CJEU	Court of Justice of the European Union
CLSR	Computer Law & Security Review
Colo. Tech. L.J.	Colorado Technology Law Journal
CPO	Chief Privacy Officer
CRI	Computer Law Review International
DII	Demographically Identifiable Information
DoS	Denial of Service
DPA	Data Protection Authority
DPD	Data Protection Directive
DPIA	Data Protection Impact Assessments
DPMS	Data Protection Management Systems
DPO	Data Protection Officer
DSG	Bundesgesetz über den Datenschutz
ECHR	European Convention on Human Rights
ECPA	Electronic Communications Privacy Act
EDPB	European Data Protection Board
EEA	European Economic Area
EIOD	European Investigations Order Directive
ENISA	European Union Agency for Network and Infor- mation Security

EPD	E-Privacy Directive
Eur. J. Hum. Gen.	European Journal of Human Genetics
FCRA	Fair Credit Reporting Act
FINMA	Swiss Financial Markets Supervisory Authority
FIPP	Fair Information Practice Principles
FOI	Freedom of Information
FTC	Federal Trade Commission
GATS	General Agreement on Trade in Services
GDFS	Global Distributed Files System
GDPR	General Data Protection Regulation
HIPAA	Health Insurance Portability and Accountability Act
IaaS	Infrastructure as a Service
ICCPR	International Covenant on Civil and Political Rights
IoT	Internet of Things
IP	Intellectual Property
ISA	Investor-State Dispute Settlement
ISM	Australian Government Information Security Manual
ISO	International Organization for Standardization
ISP	Internet Service Provider
IT	Information Technology
ITA	International Trade Agreements
JHA	Justice and Home Affairs Council
JILT	Journal of Information Law and Technology
NAS	Network Attached Storage
NIST	National Institute of Standards and Technology
NSA	National Security Agency
NYU	New York University
ORF	Österreichischer Rundfunk
OTT	Over-the-Top
PaaS	Platform as a Service
PbD	Privacy by Design
PCLOB	Privacy and Civil Liberties Oversight Board
PECR	Privacy and Electronic Communication Regulation
PET	Privacy Enhancing Technologies
PRA	Pen Register Act
PSPF	Protective Security Policy Framework
RAM	Random Access Memory
SaaS	Software as a Service
SCA	Stored Communication Act
SEC	Securities and Exchange Commission

SLA	Service Level Agreement
SSL	Secure Sockets Layer
STLR	Stanford Technology Law Review
TFEU	Treaty on the Functioning of the European Union
TISA	Trade in Services Agreement
ToS	Terms of Service
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
UCLA	University of California Los Angeles
UDHR	Universal Declaration of Human Rights
VM	Virtual Machine
VPN	Virtual Private Networks
Wash. & Lee L. Rev.	Washington and Lee Law Review
XaaS	X as a Service
ZIK	Zentrum für Informations- und Kommunikationsrecht an der Universität Zürich
ZSR	Zeitschrift für schweizerisches Recht

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