

Data and Society

Lecture 22 -- Digital Rights in the EU and China

4/22/21

Today's Class

- Lecture / Discussion
- Student Presentations

Next time: Tech in the News

- **Find a tech-related article** in an evidence-based publication.
- **Be prepared to provide the class a concise, one-sentence description of the article in the chat.** Class will choose articles.
- **Be prepared to lead a short discussion of the article** with the class. Bring the URL to put in the chat.

Date	Topic	Speaker	Date	Topic	Speaker
1-25	Introduction	Fran	1-28	The Data-driven World	Fran
2-1	Data and COVID-19	Fran	2-4	Data and Privacy -- Intro	Fran
2-8	Data and Privacy – Differential Privacy	Fran	2-11	Data and Privacy – Anonymity / Briefing Instructions	Fran
2-15	NO CLASS / PRESIDENT’S DAY		2-18	NO CLASS	
2-22	Legal Protections	Ben Wizner	2-25	Data and Discrimination 1	Fran
3-1	Data and Discrimination 2	Fran	3-4	Data and Elections 1	Fran
3-8	Data and Elections 2	Fran	3-11	NO CLASS / WRITING DAY	
3-15	Data and Astronomy (Op-Ed due)	Alyssa Goodman	3-18	Data Science	Fran
3-22	Digital Humanities	Brett Bobley	3-25	Data Stewardship and Preservation	Fran
3-29	Data and the IoT	Fran	4-1	Data and Smart Farms	Rich Wolski
4-5	Data and Self-Driving Cars	Fran	4-8	Data and Ethics	Fran
4-12	NO CLASS – WELLNESS DAY	Fran	4-15	Cybersecurity	Bruce Schneier
4-19	Data and Dating	Fran	4-22	Digital Rights in the EU and China	Fran
4-26	Tech in the News	Fran	4-29	NO CLASS	Fran
5-3	Wrap-up / Discussion				

Lecture and Discussion

- Digital rights in the EU
- Digital rights in China

European Union (EU) Digital Agenda

- Overall aim is to deliver sustainable economic and social benefits to Europeans from information and communication technologies.
 - Europe perceived itself as lagging behind in terms of use and deployment of IT
- EU launched Europe 2020 strategy in March 2010. Digital Agenda for Europe one of the 7 flagship initiatives of the Europe 2020 Strategy. General Data Protection Regulation (GDPR) builds on work and legislation done in this area.
 - Due to Brexit, UK no longer in the EU



EU Data Challenges they focused on

- **Fragmented digital markets**
 - 27 (now 26) countries in EU, much variation between content, services, and infrastructure across borders; unification difficult
- **Lack of interoperability**
 - “weaknesses in standard setting”, difficulty in coordination
- **Rising cybercrime and low risk of trust in networks**
- **Lack of investment in networks**
- **Insufficient research and innovation efforts**
- **Lack of digital literacy and skills**
- **Missed opportunities in addressing societal challenges**

EU Digital Agenda Action Areas 1

- **Single digital market**
 - Wanted to unify telecom, services, rules, and content
 - Wanted to ensure rights and protection for consumers and businesses when doing business on-line
- **Interoperability and Standards**
- **Trust and security**
 - “**Europeans will not embrace technology they do not trust** – the digital age is neither ‘big brother’ nor ‘cyber wild west’.” (Digital Agenda for Europe, COM(2010) 245, 19.05.2010)

EU Digital Agenda Action Areas 2

- **Fast and ultra fast internet access**
 - Universal broadband coverage, open and neutral internet
- **Research and Innovation**
 - Leverage private investment and accelerate innovation
 - Increase digital literacy, skills and services
- **ICT-enabled benefits for EU society**
 - ICT-enabled energy, environment, health care, independent living, cultural diversity / arts, e-government, transportation.
- EU considers the **privacy of communications and the protection of personal data** to be **fundamental rights, codified in EU law.**

Europe's GDPR (General Data Protection Regulation)



- **What is GDPR?**
 - Regulation that protects EU citizens wrt the **processing of personal data and the free movement of their data.**
 - Passed by the EU Parliament in April 2016 and implementation commenced in May 2018.
 - **Does not cover personal data used in national security activities or law enforcement**
 - Replaced “Data Protection Directive”
- GDPR constitutes a single set of rules **applies to all EU member states**
- GDPR applies to **any organization that collects data from EU residences or processes data from EU residents.** *This includes multinational companies with EU customers.*

EU Citizens' Rights Under GDPR

EU Citizens have the right to:

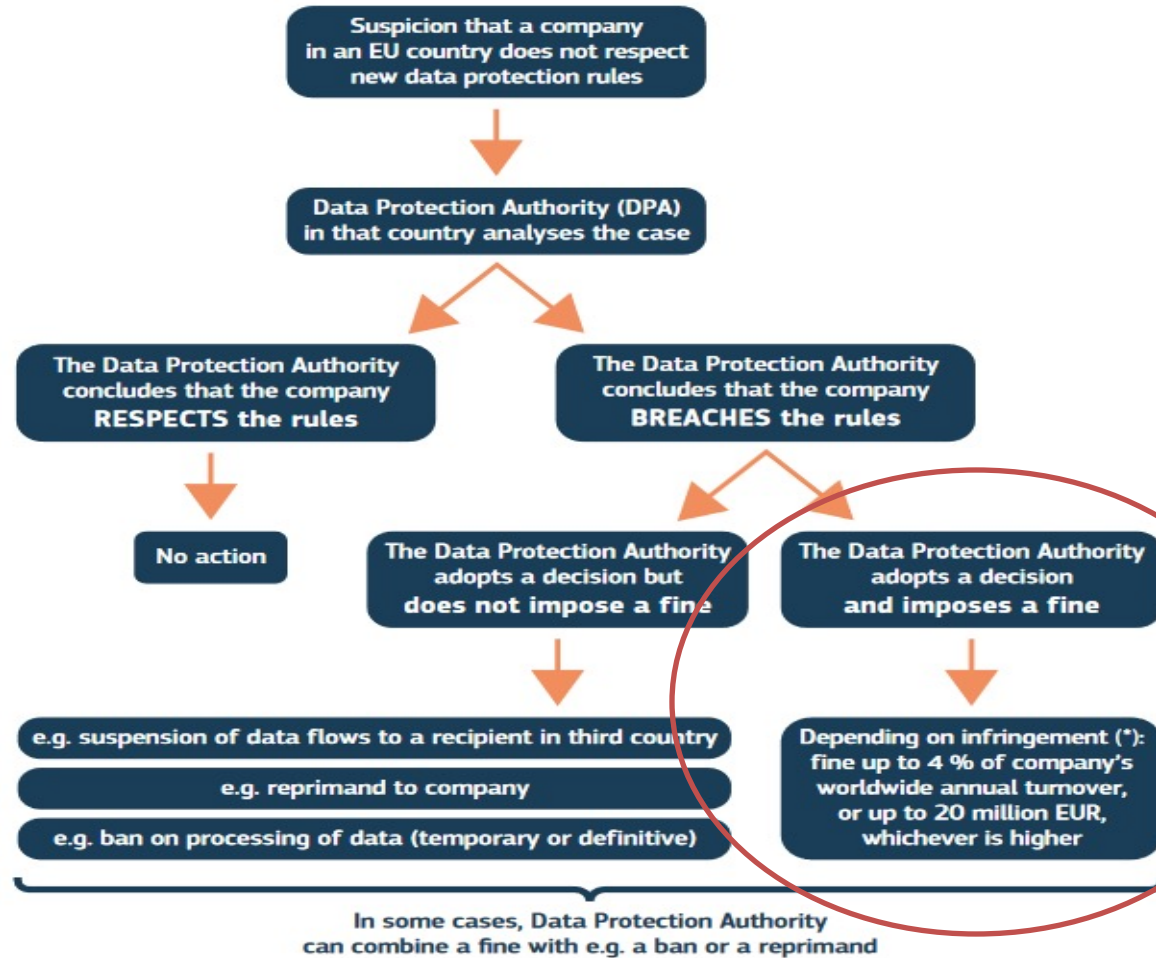
- **information** about the processing of their personal data and **access to** the personal data held about them;
- ask for incorrect, inaccurate or incomplete personal data to be **corrected**;
- request that personal **data be erased** when it's no longer needed or if processing it is unlawful;
- **object** to the processing of their personal data for marketing purposes or on grounds relating to their particular situation;
- request the **restriction** of the processing of their personal data in specific cases;
- receive their personal data in a machine-readable format and send it to another controller ('**data portability**');
- request that decisions based on **automated processing** concerning them or significantly affecting them and based on their personal data are made by natural persons, not only by computers.
- Companies must respond to requests without undue delay and **at the latest within 1 month**. If the company/organisation doesn't intend to comply with a request they must state the reason why.

Rights apply across the EU, regardless of where the data is processed and where the company is established. These rights also apply when EU citizens buy goods and services from non-EU companies operating in the EU.

GDPR enforcement, sanctions, penalties

(from https://ec.europa.eu/info/sites/info/files/data-protection-factsheet-role-edpb_en.pdf)

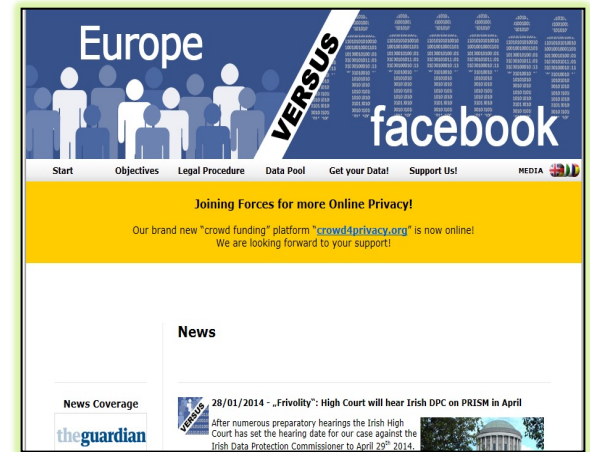
HOW WILL THE SANCTIONS MECHANISM WORK IN PRACTICE?



- (*) Data Protection Authorities take into account the following elements to determine the fine:
- nature of the Infringement done by company (see articles 5, 6, 8, 9 of the GDPR)
 - actions taken by company to mitigate the damage suffered
 - relevant previous Infringement done by the same company

Digital rights in the EU in action: **Europe vs. Facebook (2011-2017)**

- “Europe vs. Facebook” Group started by Austrian University student then lawyer **Max Schrems** grew to a grass-roots movement of 40,000+ people
 - Issue was **potential violation of EU data protection law due to personal data collected by Facebook**, etc.
 - Schrems requested personal data and received CD with 1200 pages of data
 - Facebook collected data Schrems never consented to provide: physical location, data he had deleted, etc.
- Schrems filed complaints with Irish Data Protection Commissioner alleging violations of European privacy law (pre-GDPR). 40,000 other users also requested FB data.
 - FB developed a SW tool to provide users a quick overview of the data being kept on file.
 - FB also agreed to cut the amount of time it retains data on user activities to less than one year.
- Schrems suits were instrumental in bringing down “Safe Harbor” provision that required U.S. to protect EU data in the U.S. the same way it would be protected in Europe



Schrems continues efforts: Digital rights initiatives (Europe vs. Facebook) → GDPR (NOYB)

- Schrems remains active in privacy arena. Started NOYB (None Of Your Business) non-profit to push regulators to enforce privacy laws by bringing strategic litigation against companies.
- After GDPR launched, Schrems filed some of the first complaints against Facebook, WhatsApp, Instagram, and Google for coercing users into accepting data collection policies to test privacy protections of GDPR.
- Based on the complaint, the French data protection authority issued a 50 M euro fine against Google LLC.



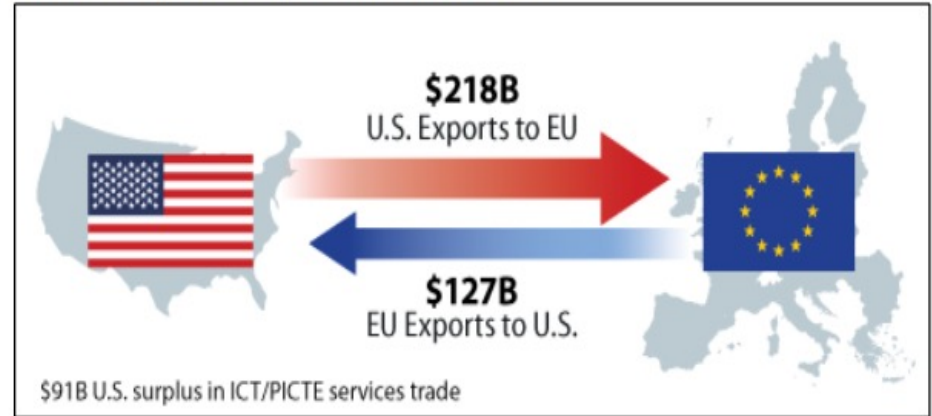
GDPR penalties

- According to research from DLA Piper, **between January 26, 2020, and January 27, 2021:**
 - GDPR fines rose by nearly 40%
 - Penalties under the GDPR totaled €158.5 million (\$191.5 million)
 - Data protection authorities recorded 121,165 data breach notifications (19% more than the previous 12-month period)
- **Some of the biggest fines so far:**
 - **Google** (\$56.6M): insufficient information to users in consent policies and insufficient control over how personal data is processed
 - **H&M** (\$41M): monitoring of employees and use of detailed profile to evaluate performance and make decisions about their employment
 - **British Airways** (\$26M): insufficient security measures that led to a 2018 data breach that exposed payment info, names and addresses
 - **Marriott** (\$23.8M): exposure of 383M guest records (payment info, passports, names, addresses, etc.) after the reservation DB was hacked

Implications of GDPR for the U.S.

- Many U.S. firms have made changes to comply with GDPR, including revising and clarifying user terms of agreement and asking for explicit consent.
- **GDPR expects a “compliance bureaucracy”** (e.g. Data Protection Officer) from firms who deal with EU citizens – new infrastructure for many U.S. firms
- Some U.S. firms have decided not to do business in the EU or to conduct mergers and acquisitions with EU companies
- **California Consumer Privacy Act the closest we have to GDPR-style digital rights protections in the U.S., not as comprehensive**
- **No current cross-border data flow agreements between the U.S. and the EU** (Safe Harbor, Privacy Shield now invalid)

Figure 1. U.S.-EU Trade of ICT and Potentially ICT-Enabled (PICTE) Services, 2018



Source: Bureau of Economic Analysis interactive data Table 3.3.

<https://fas.org/sgp/crs/row/IF10896.pdf>

U.S. Privacy Laws evolving in a different cultural context than GDPR

- Will need to acknowledge U.S. “bottom up” legacy of privacy laws and support for the “**rights of companies**” vs. EU’s “top down” approach and support for the **rights of individuals**
- The U.S. will need to establish a **compliance and enforcement structure** that works for the U.S.
- Laws will need to work with the U.S. **Bill of Rights**

“The CCPA and GDPR both provide consumers/data subjects with certain rights regarding their personal information/data. **The rights afforded data subjects under the GDPR are broader**, including the **right to rectify incorrect data, to object to or restrict processing, and the explicit right to data portability**. Both pieces of legislation require businesses/organizations to notify individuals of their rights. **Under the CCPA, consumers have the right to opt-out of the sale of their personal information** and a business must provide this opt-out on its website/app.”

United States: California Privacy Law vs GDPR: Individuals' Rights With Respect To Their Personal Data

<https://www.mondaq.com/unitedstates/data-protection/1046314/california-privacy-law-vs-gdpr-individuals39-rights-with-respect-to-their-personal-data>

China's social credit system

- Chinese **Social Credit System** is a *national reputation system* being developed by the Chinese Communist Party (CCP), under CCP General Secretary Xi Jinping's administration.
- 2020 the end of the planning period. Some elements exists, others still proposed.
- System meant to standardize the assessment of **citizens' and businesses' economic and social reputation**, or 'Social Credit'.
- The social credit initiative calls for the establishments of unified record system for individuals, businesses and the government to be **tracked and evaluated for trustworthiness**.
 - Nationwide regulatory methods have been focused primarily on “whitelisting” and “blacklisting”.
- Credit system closely related to China's mass surveillance systems, which use facial recognition, big data analysis technology, AI, and other digital techniques.
- **System leverages close relationship between public and private sector** in China.

Rewards and Penalties

- **Citizens may experience rewards or penalties based on their economic and personal behavior.**
- Reports of **untrustworthy behavior** include fraudulent and dishonest financial behavior, playing loud music, eating in rapid transit, violating traffic rules, making reservations at restaurants and hotels and not showing up, failing to correctly sort personal waste, fraudulently using other people's public transportation ID cards, etc.
- **Trustworthy behaviors** include donating blood, donating to charity, volunteering for community services, etc.

Punishments may include:

- Denial of high speed rail tickets
- Ban of children of untrustworthy parents from attending private schools or university
- Appearance on a public blacklist

Rewards may include:

- Easier access to loans and jobs
- Priority during bureaucratic paperwork
- Better access to better goods and services

China has multiple Social Credit Systems

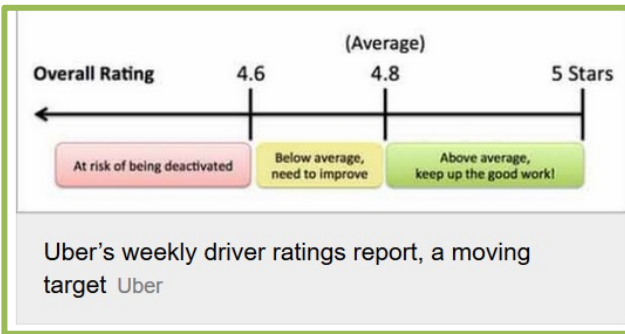
- **4 current types of credit systems** – not interconnected seamlessly but some interconnections
 - **Judicial system** – blacklist system for discredited individuals and organizations (debtors).
 - Public-private sector coordination (e.g. which private sector companies deduct credit points from people who defaulted on court fines)
 - **Financial system** – users with good scores offered advantages, bad scores disadvantaged
 - Voluntary pilots testing social credit experiments for state
 - Some pilots using big data analysis and AI to create scores
 - **Local Government** – various cities piloting credit sharing platforms, data sharing efforts with other cities, rule-based systems
 - **Commercial credit-sharing system** – goal is for social credit system to serve as a *market regulation mechanism promoting company compliance* with government policies and regulations and promote self restraint and trust in the Chinese market.
- Close relationship and cooperation between public and private sector.
- **Not clear whether national system will be an ecosystem of various scores and blacklists by government agencies and private companies or unified**

China's social credit system: Two perspectives

Wikipedia:

- “**Supporters** of the Credit System claim that the **system helps to regulate social behavior, improve the "trustworthiness"** which includes paying taxes and bills on time and **promote traditional moral values.**
- **Critics** of the system claim that it **oversteps the rule of law and infringes the legal rights of residents and organizations,** especially the right to reputation, the right to privacy as well as personal dignity, and that the **system may be a tool for comprehensive government surveillance and for suppression** of dissent from the Communist Party of China.”

Not so far from current U.S. practice?



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- **Close in some respects to U.S. practice:** *people with higher scores get more social and financial breaks while people with lower scores are penalized:*
 - Not illegal for employers to deny an applicant a job offer based on information in their credit report.
 - People with poor credit may be turned down for housing. Historical barriers for people of color pursuing homeownership
 - People with bad credit pay more for car insurance

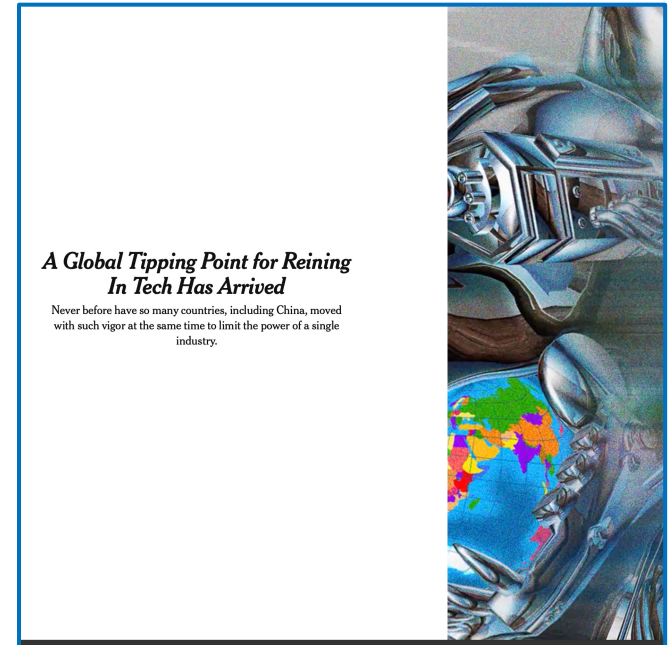
2020-2021: China reining in independent power of tech companies

- Previously Beijing blocked foreign websites and policed content on domestic websites; **Alibaba** (e-commerce), **Tencent** (WeChat, music, gaming, etc.) and others allowed to grow and expand
 - Industry characterized by cutthroat competition and huge influence over political issues
- *November 2020*: government halted **Ant Group's** (financial, electronic payment processing) initial public offering; April 2020, government ordered Ant to go through a rectification plan to change the way it runs investment and credit products
- *December 2020*: government opened anti-monopoly investigation against Alibaba
- *April 2021*: \$2.8B fine for Alibaba
- *April, 2021*: Largest companies (including Tencent and **ByteDance** [TikTok]) asked to conduct a self-inspection and publicly promise to curb anticompetitive behavior and follow Chinese laws on data protection, taxes, speech, etc.
- **Goal is to have a “subservient, quiescent private sector”** [Jude Blanchette, NYT]

Global tipping point for tech regulation?

<https://www.nytimes.com/2021/04/20/technology/global-tipping-point-tech.html?referringSource=articleShare>

- **China** fined Alibaba \$2.8B for anti-competitive practices
- **EU** unveiling new regulations to limit AI
- **U.S.** getting more serious about anti-trust for tech and privacy regulations
- **Russia** throttled Twitter traffic
- **India** adopted new powers over social media
- **Australia** will force Google to pay publishers for news
- **Cambodia** and **Myanmar** restricting Internet



Motivations vary: anti-monopoly and stimulating competition, spread of misinformation, eroding privacy, silence of protest movements, tighten political control

Lecture 22 References (not already on slides) 1

- **Digital Agenda for Europe**,
<https://www.europarl.europa.eu/factsheets/en/sheet/64/digital-agenda-for-europe>
- **EU Data Protection Rules and U.S. Implications**, Congressional Research Services,
<https://fas.org/sgp/crs/row/IF10896.pdf>
- **The Cybersecurity 202: Why a privacy law like GDPR would be a tough sell in the U.S.**, Washington Post,
<https://www.washingtonpost.com/news/powerpost/paloma/the-cybersecurity-202/2018/05/25/the-cybersecurity-202-why-a-privacy-law-like-gdpr-would-be-a-tough-sell-in-the-u-s/5b07038b1b326b492dd07e83/> **“China’s Surveillance State should scare everyone,”** The Atlantic,
<https://www.theatlantic.com/international/archive/2018/02/china-surveillance/552203/>
- **“Social Credit System”**, Wikipedia,
https://en.wikipedia.org/wiki/Social_Credit_System
- **“The Complicated Truth about China’s Social Credit System,”** Wired,
<https://www.wired.co.uk/article/china-social-credit-system-explained>

Lecture 22 References (not already on slides) 2

- **“Spend Frivolously and be penalized under China’s new social credit system”**, Vox, <https://www.vox.com/the-goods/2018/11/2/18057450/china-social-credit-score-spend-frivolously-video-games>
- **China’s social credit system planning outline**, <https://chinacopyrightandmedia.wordpress.com/2014/06/14/planning-outline-for-the-construction-of-a-social-credit-system-2014-2020/>
- **“Is UltraFICO score good or bad for consumers?”**, USN&WR, <https://creditcards.usnews.com/articles/is-the-ultrafico-score-good-or-bad-for-consumers>
- **14 biggest fines of GDPR in 2020 and 2021 (so far)**, <https://www.tessian.com/blog/biggest-gdpr-fines-2020/>
- **Max Schrems, the man who took on Facebook and won**, Financial Times, <https://www.ft.com/content/86d1ce50-3799-11e8-8eee-e06bde01c544>

Presentations



Last Presentations

- **“What a gambling app knows about you”**, New York Times, <https://www.nytimes.com/2021/03/24/technology/gambling-apps-tracking-sky-bet.html> (Ishita)
- **“Can computer algorithms learn to fight wars ethically?”**, Washington Post, https://www.washingtonpost.com/magazine/2021/02/17/pentagon-funds-killer-robots-but-ethics-are-under-debate/?no_nav=true&tid=a_classic-iphone (Jin)