

CENTER FOR INFORMATION TECHNOLOGY SOCIETY AND LAW — ITSL

Schriften aus dem ITSL, herausgegeben
von Florent Thouvenin und Rolf H. Weber

Volume 2

Rolf H. Weber/Dominic N. Staiger

Transatlantic Data Protection in Practice

Schulthess § 2017

 Springer

Table of Contents

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

- C. Principles of Data Protection and Privacy in the US..... 26**
 - I. Evolution of Data Protection in the US 26
 - II. Current Data Protection Framework 27
- D. EU Data Protection Framework 30**
 - 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
- E. US Data Protection Framework 39**
 - 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
- F. International Trade Law and Privacy 55**
 - 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

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

Challenges.....	62
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

C. Business to Consumer in the Cloud	88
I. Data Protection Implications	89
II. Consumer Protection	90
D. Big Data Analytics Challenges.....	91
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
E. Discrimination Based on Data	101
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
F. Compliance and Risk Mitigating Measures	109
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

III. Updates	118
IV. Insurance	118
G. Ensuring Data Security	120
I. General Measures	121
II. Security and the Internet of Things	125
III. Labor Law Challenges of IT Sourcing	131
Part 4: Outlook on Future Developments	134
A. Shaping Global Privacy	134
B. Regulatory Efforts	136
Part 5: Annexes	138
A. Comparative Table – Government Access	138
B. Interview Summaries	140
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