Connected Devices on the Internet of Things…
... generate vast amounts of data ...
... for and incidental to navigation, diagnostics, biometrics, virtual assistants, analytics, city planning, traffic control, risk management, advertisements...
... for various, legitimate purposes...
... raising various legitimate concerns, including regarding data privacy and data protection.
What is data? What is privacy? Why and how protect privacy and data?
Data = information
personal data

‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’);

an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
privacy

- right to be left alone
- sphere of autonomy
- dignity
- information self-determination
- control over information about oneself
- protection of reasonable expectations
- protection against intrusion into seclusion
- exclusion rights, but no ownership rights (no absolute rights of possession, transfer or use)
The 4th Amendment to the U.S. Constitution protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”
You already have zero privacy - get over it.

(Scott McNealy)
data protection

Processing shall be lawful only if and to the extent that at least one of the following applies: (a) the data subject has given consent.

‘processing’ means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
data protection

Default and starting point: prohibition

Three hurdles to cross-border transfers:

1. Collection and local processing
2. Transfer to another controller
3. Transfer outside the EEA
Tagesrapport Nr. 6 vom 12., 13. und 14.11.1938

Staatspolizeilieitsstelle Wien

Tagesrapport Nr. 6

Nationale Opposition:

Ettenauer Johanna, Nährin z.Zt. Beschäftigung, 7.8.1909 zu Wien geboren, Wien 7., Apollogasse Nr.15 wohnhaft,

wurde wegen Beleidigung des Führers und Reichskanzlers durch Verbreitung eines Schmähgedichtes (siehe Tagesrapport Nr. 15 vom 30.10.1938) festgenommen.
- Philosophiestudium 1968 – 74 an FU-Amsterdam
- 1968 Promotion.
- 1968 wissenschaftlicher Mitarbeiter FU-Amsterdam
- seit 1974 Generalsekretär IKV
- Publikationen: div. Artikel
- IKV-Büro: IKV, postbus 10747, 2503 BS La-Gravenhage.

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Landesrecht in Hessen Datenschutz

- Hessisches Datenschutzgesetz (HDSG)
- Verordnung zur Regelung der Zuständigkeiten nach dem Bundesdatenschutzgesetz und anderen Gesetzen zum Datenschutz
- Hessisches Archivgesetz (HArchivG)
- Hessisches Meldegesetz (HMG)
- Hessisches Krankenhausgesetz (HKHG)
- Hessisches Gesetz über den öffentlichen Gesundheitsdienst (HGöGD)
- Hessisches Kehrichtregistergesetz (HKRG)
EU Data Protection Directive 95/46/EC
US Data Privacy Law

U.S. data privacy ≠ EU data protection

– No general prohibitions
– No omnibus restrictions
– No data protection authorities (no filings, approvals, registrations)
– No specific limits on international transfers
– No general data retention, residency requirements
US Data Privacy Law

- Privacy-related protections appear in various statutes and common law principles
- Sectoral laws (health, financial services, children, etc.)
- State and Federal law
- Real enforcement, by FTC, State Attorneys General, Class action lawsuits
The whistleblower

I can't allow the US government to destroy privacy and basic liberties.
AGENTS OF S.H.I.E.L.D.
General Data Protection Regulation
EU GDPR

Art. 5(2): Documentation, shift of burden of proof re. compliance
Art. 6: general prohibition, limited exceptions
Art. 12-14: information requirements
Art. 15-21: data subject access rights
Art. 32-34: security & breach notification
Art. 44-48: prohibition of international transfers, disclosures

Sanctions of Euro 20m or 4% of annual turnover
California Consumer Privacy Act of 2018

- Effective - January 1, 2020
- Enforcement - July 1, 2020
- Look-back to January 1, 2019
- Applies to companies worldwide, B2C and B2B
- Disclosure requirements, opt-in, opt-out re. “selling of personal information”
- New consumer rights to access, deletion, and porting of personal data
- New penalties
- New statutory damages in case of data security breaches
No one owns data, but data is subject to a complex landscape of access rights and restrictions

Rights to data access, erasure, portability and use restrictions

Computer interference laws - requires authorization from car owner (navigation, traffic update, accident reports, entertainment and telematics services)

Right to Repair Statutes and Environmental and Competition Laws

Consumer Protection, Product Safety, Implied Warranties, and Sustainability
Data implicates various interests

- Car owners
- Other traffic participants
- Add-on Service Providers
- Insurance companies
- Drivers and Passengers
- Manufacturers
- Car dealers and distributors
- Law Enforcement and Government
Car owners

functionality
safety
privacy
security

navigation
telematics
add-on services
entertainment
autonomous driving
call home after accident
individual insurance tariffs
Drivers and passengers

safe ride
privacy
functionality
Other traffic participants
Manufacturers

product safety
maintenance
improvements
new products, services
defense against litigation

compete
market disruption
marketing
maintenance, new cars, add-on services
Insurance companies

- Risk management
- Calculate premiums
- Develop individual tariffs
Government and law enforcement

prevent and investigate crimes and misdemeanors

radar traps
speed control
Now: Data Ownership Debate in Germany
No One Owns Data


... and no one should own data
Summary and conclusions

Privacy
Data privacy
Data security
Data protection
Data ownership
Data retention
Data residency
Trade secret protection

.... are very different concepts and often mixed up for advocacy, political reasons.
Trends

Restrictions on data sharing, selling – impact on competition, innovation
Data protection as trade measure
Data residency
Data security threats
Privacy law enforcement
Lothar Determann

Determann's Field Guide to Data Privacy Law
International Corporate Compliance
THIRD EDITION

Practical Guide and Commentary
U.S. Federal and California Law
Third Edition, 2018

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