

It's Time for a Global Privacy Agreement

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Whenever I've mentioned to chief privacy officers the idea of having a single set of privacy rules for their companies to abide by worldwide, their response has been unanimous: Bring it on. Why? The legal and technical costs of complying with an expanding patchwork of state, federal and foreign privacy laws are mounting for multinationals. One set of rules, in their view, would improve the bottom line.

The world's data-protection commissioners are singing the same tune. At their last meeting, in Montreux, Switzerland, they called for international coordination of privacy enforcement (see [the Montreux Declaration](#)).

You and I as customers and employees would also benefit from one set of rules that we could come to know and understand — instead of the vast array of obtusely worded privacy notices that we see on Web sites and find in our mailboxes.

In fact, it's hard to imagine a major constituency, outside of the Idaho and Michigan militias, that would be against the concept of a global privacy agreement, properly worded. So what's the holdup? Why haven't negotiations started toward this end?

I think it all comes down to two questions that America and Europe answer differently:

1. What does privacy mean?
2. Is privacy an inalienable human right?

If the two blocs of the Western world can agree on the first question and agree to disagree on the second, I think the stage will be set for starting some serious negotiations.

What does privacy mean? The word *privacy* is nowhere in the U.S. Constitution. If you don't believe me, do a word search yourself from the text of the Constitution you can find on Wikipedia (see [the entry for United States Constitution](#)). Americans have had an evolving understanding of what privacy means, and it continues to change. I can point to three major turning points in how America answers the question "What is privacy?"

1. Newspaper Age (1890). Chief Justice Louis Brandeis [proposed](#) in the *Harvard Law Review* that there is a right to protection from public disclosure of private facts.
2. Television Age (1960). Law professor William Prosser proposed in the *California Law Review* that there are four types of violations of privacy: public disclosure of private facts, false publicity, appropriation of a name or likeness, and intrusion upon seclusion.
3. Information Age (2006). Law professor Daniel Solove [proposed](#) in the *University of Pennsylvania Law Review* that there are four broader dimensions of privacy: information collection, information processing, information dissemination, and intrusion upon seclusion.

If you think this is complex, the European Union, by contrast, has developed eight principles it believes comprise the essence of privacy protection (see Graphic 1 for a list of the principles). The U.S.-EU Safe Harbor privacy accord is based on seven principles, and Canada and Australia have each developed 10 privacy principles.

Graphic 1 **Europe's Eight Privacy Principles**

In Europe, personal information is considered legally private if it is:

1. Fairly and lawfully processed
2. Processed for limited purposes
3. Adequate, relevant and not excessive
4. Accurate and up to date
5. Not kept for longer than is necessary
6. Processed in line with individuals' rights
7. Secure
8. Not transferred to other countries without adequate protection

Source: U.K. Information Commissioner's [Data Protection Guide](#).

Is it possible to bridge all of these differences into one common meaning of *privacy*? I think so. There is a tremendous amount of overlap among these various lists of privacy principles. To that end, I've been sharing a list of seven global privacy principles with my CPO peers over the past year, and

it hasn't generated any controversy or major objection (see Graphic 2 for the list). I think the major industrialized countries are converging on the question of "What does privacy mean?" and the time is ripe to start forging a consensus.

Graphic 2 **Global Privacy Principles?**

These seven principles, which reflect the essential principles of the world's various privacy laws, could form the basis of a global agreement on privacy:

1. **Notice.** Provide individuals a privacy policy at or near the time of collecting their data.
2. **Relevance and Retention.** Require individuals to provide only those data fields that are needed for the business at hand, and retain it only as long as needed for that business.
3. **Access and Accuracy.** Provide individuals a way to securely access and correct their information.
4. **Security.** Protect individuals' information from unauthorized access within the collecting organization and any other organization or country to which it is transferred.
5. **Choice – Third-Party Sharing.** Provide individuals a choice for whether third parties may access their information for analytical or marketing purposes.
6. **Choice – Direct Marketing.** Provide individuals a choice for whether they may be contacted for marketing purposes.
7. **Enforcement.** Appoint a senior executive to be responsible for annually assessing the organization's compliance with these principles.

Source: Jay Cline

Is privacy an inalienable human right? Europeans want the answer to this question to be "yes" and want the world to agree with them. And it's hard to blame them. After the experiences of World War II, where Europe's Axis-aligned governments exploited their access to citizen information to

round up and execute opponents, you can see why they want to swing the pendulum as far in the opposite direction as possible.

Yet America invented the concept of the inalienable individual right. And so far, we've answered "no" to whether privacy rises to the pre-eminence of an intrinsic right. When we think of intrinsic rights, we think of rights the government must *recognize* and *cannot stop* us from doing because of the inherent dignity of our human nature. The government must recognize our freedoms of speech and the press, for example, and cannot stop us from speaking and printing newspapers.

But to say that we have a "freedom of privacy" and that the government can't stop us from being private would be one of the most ambiguous amendments to the Constitution we've yet had. "Being private" is still too general an idea for which we do not have a common understanding in this country. If Europe doesn't want the U.S. to participate in a global privacy agreement, one way to ensure that outcome is to insist that the U.S. establish privacy as a human right subject to the oversight of the notorious UN Human Rights Commission.

Every major constituency — citizens, businesses and governments — would benefit from a single set of global privacy rules. The question is: which U.S. trade association and government agency will carry the flag forward?

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