



Privacy and technology in balance

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ECHR case-law principles

- Any state interference must be “**in accordance with the law**”, pursue **legitimate aims** and, in addition, be “**necessary in a democratic society**” to achieve those aims.
- Even **public information** can fall within the scope of private life where it is systematically collected and stored.
- The state is required to create an **appropriate regulatory framework**, including both **legislation and enforcement capacity**, to ensure effective protection.
- There must be **accessible and effective remedies**





Third-party applicability

- ECHR: protection must also be provided vis-à-vis interferences by non-state actors.
- Convention 108 (1981): **principles apply to the public as well as the private sector** because already then most international data traffic occurred in the private sector

Too European for the global market?



- **Colombian Constitutional Court** judgment C-748/2011 reviews draft data protection legislation
- US Supreme Court - **United State v. Jones** [2012]: installation of a GPS device on a car is “search”
- **South Korean Supreme Court** [2012] declares **internet ‘real name’ policy unconstitutional**

Convention 108



- Purpose: to secure respect for the right to privacy for every individual .
- Modernisation process pursues two objectives
 - address privacy challenges resulting from new ICTs
 - strengthen the Convention's follow-up mechanism.

Convention 108 – innovations



- **Preamble:** introduce notions of “human dignity” and “the right to control one’s own data and use made of such data”
- **Sensitive data:** include also genetic data, biometric information and focus on context
- **Transparency**
- **Impact assessment**
- **Privacy by design**



Balancing of competing rights and freedoms

- Privacy and data protection versus (?) freedom of expression, freedom to provide services, right to property, workers' rights, freedom of association
- “*praktische Konkordanz*” (“practical reconciliation”)
- *A general exception for freedom of expression (the ‘press privilege’)?*
- “Right to be forgotten”?



Conclusion



- Right to privacy: “leave me alone”, “respect me”, “what you think it is” or “what we tell you it is”?
- Right to decide how personal information is collected, used and distributed



Thank you for your attention.

<http://www.coe.int/dataprotection>