

“The New EU Privacy Law – the ‘GDPR’:  
Background, Development, and Consequences”

Georgetown University Law Center  
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Course title

“The New EU Privacy Law – the ‘GDPR’: Background, Development, and Consequences”

The General Data Protection Regulation of the European Union went into force in May 2018. The GDPR is the most comprehensive privacy law ever enacted and it will have immediate impact on firms and consumers all around the world. This course provides an intensive introduction to the GDPR, drawing on the text of the Regulation, background materials, and related EU law developments. It explores the development of privacy law in the modern democratic state, assesses the strengths and weaknesses of the Regulation, and examines the challenges ahead for implementation and compliance.

Faculty name(s)

Prof. Marc Rotenberg  
Prof. Bilyana Petkova

Classroom and meeting times

Hotung H4004, Th 5:45pm-7:45pm  
(1/17, 1/24, 2/7, 2/14, 2/28, 3/7, 3/21)

Contact information

Prof. Marc Rotenberg  
202-415-6788 (c)  
[rotenberg@georgetown.cs.edu](mailto:rotenberg@georgetown.cs.edu)

Prof. Bilyana Petkova  
[bilyana.petkova@yale.edu](mailto:bilyana.petkova@yale.edu)

Office hours

By appointment, typically before or after class

Student learning goals

The aim of this class is to provide:

- An in-depth understanding of the provisions of the General Data Protection Regulation
- A general understanding of the historical and political circumstances that gave rise to the adoption of the GDPR

- A general understanding of current developments related to the GDPR
- A focused understanding of key provisions in the GDPR and its significance for the development of modern privacy law, including consent, collective actions, data protection impact assessments, algorithmic transparency, remedies, supervisory authorities, and the European Data Protection Board
- An introduction to related issues in transborder data flows, including cross-border access to information sought by law enforcement agencies
- A brief introduction to regulatory theory, the “ratcheting up of standards” and the “California/Brussels effect”
- Authoritative reference materials that will aid students as they undertake future work on the GDPR

### *Evaluative criteria*

#### Class Participation (30%)

- Preparation
- Engagement in discussion
- Respect for the views of others

#### Paper (70%)

- Selection of topic
- Relation to class materials
- Organization of paper
- Clarity of argument
- Quality of research
- Authority of citations
- Originality

### Assigned Reading

There are two primary texts for this course: Marc Rotenberg, *Privacy Law Sourcebook: U.S. Law, international Law, and Recent Developments* (EPIC 2018) and the *EU Handbook on European Data Protection Law* (May 2018). The *Sourcebook* contains the text of the GDPR, related international instruments, and relevant resources. The *EU Handbook* provides an overview of the privacy laws of the European Union and the Council of Europe. The *EU Handbook* also explains key case law, summarizing major rulings of both the Court of Justice of the European Union and the European Court of Human Rights. The *Privacy Law Sourcebook* is available as an e-book for \$10. There is no cost for the digital version of the *EU Handbook*.

We will also post many of the readings assigned at the website of Allen and Rotenberg, *Privacy Law and Society* ([privacylawandsociety.org](http://privacylawandsociety.org)). Finally, the syllabus will be updated regularly so please check for any updates before you start preparing for class.

### Topics and reading assignments

#### **Unit 1 - Pre-GDPR, EU-US Dynamics, and EU Institutions**

## Topics

- Art. 8 of European Convention on Human Rights
- Art. 7 and 8 of the European Charter of Fundamental Rights
- The European Union Data Protection Directive of 1995
- OECD Privacy Guidelines
- Council of Europe Convention 108
- Data Protection Authorities: Article 29 Working Party  
[http://ec.europa.eu/newsroom/article29/news.cfm?item\\_type=1358](http://ec.europa.eu/newsroom/article29/news.cfm?item_type=1358)
- European Data Protection Supervisor  
[https://edps.europa.eu/edps-homepage\\_en](https://edps.europa.eu/edps-homepage_en)
- The US Code of Fair Information Practices 1973
- The US Privacy Act of 1974 (5 U.S.C. § 552a)

## Readings

- *Privacy Law Sourcebook 2018* (skim – key texts)
- *EU Handbook 2018* (Ch. 1 – Context and background of European data protection law)
- Jan Philipp Albrecht, *How the GDPR Will Change the World*, 3 EDPL 287-89 (2016)
- Marc Rotenberg & David Jacobs, *Updating the Law of Information Privacy: The New Framework of the European Union*, 36 Harv. J. L. & Pub. Pol'y 605 (2013)
- Movie, *Democracy* (2017)

## Unit 2 - Overview of the GDPR (Chapters 1 to 11):

### Topics

- Chapter 1 - General provisions
- Chapter 2 - Principles
- Chapter 3 - Rights of the data subject
- Chapter 4 - Controller and processor
- Chapter 5 - Transfers of personal data to third countries or international organizations
- Chapter 6 - Independent supervisory authorities
- Chapter 7 - Cooperation and consistency
- Chapter 8 - Remedies, liability and penalties
- Chapter 9 - Provisions relating to specific processing situations
- Chapter 10 - Delegated acts and implementing acts
- Chapter 11 - Final provisions

### Readings

- *Privacy Law Sourcebook 2018* (GDPR – focus on basic structure)
- *Handbook 2018* (Chs. 2 and 3 – Data protection terminology; Key principles of European data protection law)

### *Optional materials*

- Draft commentaries on 10 GDPR articles (*Commentary on the EU General Data Protection Regulation*, Christopher Kuner, OUP 2019, forthcoming)  
<https://works.bepress.com/christopher-kuner/1/>

## **Unit 3 – Zooming in on Key Issues in the GDPR**

### *Topics*

- Consent (Arts.6-9; see also Arts.13-14; Art.17; Art.20, Art.22; Art.83)
- Algorithmic transparency and automated decision-making (Arts. 13-15, Arts. 21-22)
- Right to erasure (Art. 17)
- Data Protection Impact Assessments (Arts. 35 and 36)
- European Data Protection Board (Arts. 68-76);
- Collective Action (Art. 80)
- Remedies (Arts.77-84)

### *Readings*

- *EU Handbook 2018* (Chs. 4 and 5, Rules of European data protection law; Independent supervision)
- EDPB, Memo of Understanding (2018), <https://edpb.europa.eu/node/58>
- Article 29 Working Party, Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679,  
[http://ec.europa.eu/newsroom/article29/item-detail.cfm?item\\_id=612053](http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=612053)
- European Union Data Protection Board, <https://edpb.europa.eu/>
- Paul de Hert, *A Human Rights Perspective on Privacy and Data Protection Impact Assessments* (September 16, 2011), Springer, Law, Governance and Technology Series 6, <http://www.vub.ac.be/LSTS/pub/Dehert/517.pdf>
- Commentary on the GDPR, Marc Cole & Franziska Boehm, Edward Edgar, forthcoming 2019. See chapter preview of Ira Rubinstein & Bilyana Petkova: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3167389](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3167389) –

### *Optional materials*

- EDPB, Rules of Procedure (2018), <https://edpb.europa.eu/node/59>
- Bilyana Petkova, *Towards an Internal Hierarchy of Values in the EU Legal Order: Balancing the Freedom of Speech and Data Privacy*, Maastricht Journal of European and Comparative Law, 23:3 (2016)
- [noyb.eu](http://noyb.eu) – *My Privacy is none of your Business*

## **Unit 4 – Transfers of personal data to third countries or international organizations**

### *Topics*

- Chapter 5 GDPR on international transfers
- Adequacy agreements

- US-EU transfers: from Safe Harbor to the Privacy Shield

### Readings

- *Privacy Law Sourcebook 2018* (Privacy Shield)
- *EU Handbook 2018* (Ch. 7, International data transfers and flows of personal data)
- Schrems Case C-362/14 (CJEU 2015)
- Report from the Commission to the European Parliament and the Council on the second annual review of the functioning of the EU-U.S. Privacy Shield, Brussels 12/19/2018 [https://ec.europa.eu/info/sites/info/files/report\\_on\\_the\\_second\\_annual\\_review\\_of\\_the\\_eu-us\\_privacy\\_shield\\_2018.pdf](https://ec.europa.eu/info/sites/info/files/report_on_the_second_annual_review_of_the_eu-us_privacy_shield_2018.pdf)
- Alan Butler, *Whither Privacy Shield in the Trump Era*, 3 EDPL 111 (2017)
- Opinion of the European Data Protection Supervisory Board on EU-Japan draft adequacy decision: [https://edpb.europa.eu/our-work-tools/our-documents/opinion-art-70/opinion-282018-regarding-european-commission-draft\\_en](https://edpb.europa.eu/our-work-tools/our-documents/opinion-art-70/opinion-282018-regarding-european-commission-draft_en)

### Optional materials

- Marc Rotenberg, *Examining the EU Safe Harbor Decision and Impacts for Transatlantic Data Flows House*, House Committee on Energy and Commerce (Nov. 3, 2015)
- Article 29 Working Party, *Report: First Annual Joint Review of the Privacy Shield* (2017), [http://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=48781](http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48781)
- *Opinion of the EDPS on the EU-US Umbrella Agreement* [https://edps.europa.eu/sites/edp/files/publication/16-02-12\\_eu-us\\_umbrella\\_agreement\\_en.pdf](https://edps.europa.eu/sites/edp/files/publication/16-02-12_eu-us_umbrella_agreement_en.pdf)

## Unit 5 – European case law and Judicial Enforcement by the European Court of Justice and the European Court of Human Rights

### Topics

- EU Charter of Fundamental Rights, Arts. 7 and 8
- Art. 8 of European Convention on Human Rights
- Pending cases on the geographic scope of the ‘right to erasure’

### Readings

- *EU Handbook* (Ch. 1, Context and Background)
- European Court of Human Rights: Factsheet on Personal Data Protection (May 2018) [https://www.echr.coe.int/Documents/FS\\_Data\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Data_ENG.pdf) Bilyana  
Speech of the President of the Court of Justice of the European Union: “The GDPR five months on”, <https://www.privacyconference2018.org/en/press-media/media>
- Google INC v CNIL, preliminary reference pending at the CJEU/ Opinion of Advocate General, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-01/cp190002en.pdf>

- Marc Rotenberg, *The Right to Privacy is Global*, US News and World Report (Dec. 5, 2014)

## Unit 6 – Related Developments – Council of Europe, E-Privacy Directive, Cross-border access:

### Topics

- Modernization of Council of Europe Privacy Convention
- E-Privacy Directive
- Cross border access to personal data by law enforcement

### Readings

- *Privacy Law Sourcebook 2018* (Council of Europe Convention)
- *EU Handbook 2018* (Ch. 8, Data protection in the context of police and criminal justice)
- Directive 2002/58/EC (2002) (the “E-Privacy Directive”), <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0058:en:HTML>
- Article 29 Working Party, *Opinion 240: Evaluation and Review of the e-Privacy Directive* (March 2016), [http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/index\\_en.htm](http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/index_en.htm)
- EDPB, Statement on e-Privacy. [https://edpb.europa.eu/news/news/2018/edpb-adopted-statement-eprivacy\\_en](https://edpb.europa.eu/news/news/2018/edpb-adopted-statement-eprivacy_en)
- European Commission, *E-Evidence – cross-border access to electronic evidence* (2018). [https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/e-evidence-cross-border-access-electronic-evidence\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/e-evidence-cross-border-access-electronic-evidence_en)
- Clarifying Lawful Overseas Use of Data (“CLOUD”) Act, H.R. 1625, 115th Cong. div. V (2018) (enacted)
- Frederik Zuiderveen Borgesius, Joris van Hoboken, Ronan Fahy, Kristina Irion, and Max Rozendaal, *An assessment of the Commission’s Proposal on Privacy and Electronic Communications, Study for the LIBE Committee* (2017), [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583152/IPOL\\_STU\(2017\)583152\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583152/IPOL_STU(2017)583152_EN.pdf)
- Jan Phillip Albrecht, *The time for ePrivacy is now*, *The Parliament Magazine* (Mar. 27, 2018), <https://www.theparliamentmagazine.eu/articles/opinion/time-eprivacy-now>
- Jen Daskal & Peter Swire, *Why the CLOUD Act is Good for Privacy and Human Rights*, *Lawfare* (Mar. 14, 2018), <https://www.lawfareblog.com/why-cloud-act-good-privacy-and-human-rights>
- Neema Singh Guliani & Naureen Shah, *The CLOUD Act Doesn’t Help Privacy and Human Rights: It Hurts Them*, *Lawfare* (Mar. 16, 2018), <https://lawfareblog.com/cloud-act-doesnt-help-privacy-and-human-rights-it-hurts-them>

## Unit 7 – Responses in Other Jurisdictions. Regulatory Theory.

### Topics

- GDPR Compliance
- Is the GDPR “extra territorial”?

- US response, including comparison of the GDPR with the Californian Consumer Privacy law
- Discussion of paper topics

Readings

- Gregory Shaffer, *Globalization and Social Protection: The Impact of EU and International Rules in the Ratcheting Up of US Data Privacy Standards*, 25 Yale J. of Int.L. 1 (2000)
- Marc Rotenberg, *On International Privacy: A Path Forward for the US and Europe*, Harvard International Review (Spring 2014)
- Bilyana Petkova, *The Safeguards of Privacy Federalism*, Lewis & Clark Law Review 20:2 (2016).
- Kristina Irion, *Dream of Californication: welcome to the Californian Consumer Privacy Act*, <https://policyreview.info/articles/news/dream-californication-welcome-californian-consumer-privacy-act/1351>
- Indian Supreme Court: [Justice K.S. Puttaswamy \(Retd\) vs Union of India](#) (2017)

Attendance and participation policy

Class participation	30%
Final paper	70%

All relevant deadlines and your policy on late assignments

One paper 10-15 page is required. Extensions are permitted if approved by the registrar.

In-class behavior

Students are expected to complete the assigned readings prior to class, arrive on time, participate in the discussion and respect the views of others.

Course recording policy

Option 2. Students may be granted access to class recordings for disability or religious accommodations purposes. Students who are unable to attend class are encouraged to get notes from those students who attended.

Laptop policy

Laptop are permitted. Viewing Netflix during class is not

Reference

Georgetown Law: *Best Practices for Course Design and Management* (2017)  
<https://www.law.georgetown.edu/wp-content/uploads/2018/06/Best-Practices-for-Course-Management-for-Web.pdf>