

Privacy Protection in the Global Economy: A Race to the Top or the Bottom?

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The Governance of Privacy: Policy Instruments in Global Perspective

***Colin J. Bennett
and
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The Privacy 'Toolbox'



- International Instruments
 - Council of Europe
 - OECD
 - EU
 - International Standards
- Regulatory Instruments
- Self-Regulatory Instruments
- Technological Instruments

Council of Europe Arena



- 1981 Convention on the Protection of Individuals with Regard to the Automatic Processing of Personal Data (Treaty 108)
 - Ratified by 25 countries
 - Signed by 33 countries
 - Recommendations on specific practices

OECD Arena

- **Guidelines on the Protection of Privacy and Transborder Flows of Personal Data(1981)**
- **Guidelines for the Security of Information Systems (1992)**
- **Guidelines for Cryptography Policy (1997)**

European Union Arena



- **Directive 95/46/EC on Personal Data Protection**
 - **Harmonization of all European Data Protection laws to higher and common standard**
 - **Insistence on a “supervisory authority” with common powers in each state**
 - **An “adequate level of protection” in countries that receive European personal data**

EU Arena (cont.)



- **Directive 02/58/EC on Privacy in the Electronic Communications Sector (Replacing Telecoms Directive 97/66/EC)**
 - **Security**
 - **Traffic Data**
 - **Cookies**
 - **Calling-Line Identification**
 - **Location Data**
 - **Directories**
 - **Unsolicited Communications**

International Standards Arena

- Abortive attempt to develop ISO Management Standard for the Protection of Personal Data
- Renewed attempts to develop management standard within the European CEN/ISSS

The World Trade Arena

- **Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures....necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to.....**
- **(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts. (GATS, Art. XVI)**

Regulatory Instruments

- Comprehensive Data Protection Law in over 30 states
- Sectoral Data Protection laws
- Oversight by expanding network of Privacy and Data Protection Commissioners

Instruments of Self-Regulation



- **Privacy Commitments**
- **Privacy Codes**
 - *organizational*
 - *sectoral*
 - *functional*
 - *professional*
- **Privacy Standards**
 - *technical*
 - *management*
- **Privacy Seals**

Technological Instruments



- Systemic Instruments
 - Code
 - Lex Informatica
- Collective Instruments
 - Public-Key Infrastructures
- Instruments for Individual Empowerment
 - Encryption Tools
 - Tools for Anonymity and Pseudonymity
 - Filtering Tools
 - Privacy Management Protocols

A Trading-Up of Privacy Standards

- BUT, HOW CAN WE EXPLAIN THE RISING LEVELS OF SURVEILLANCE IN WESTERN SOCIETIES WHEN THERE IS SO MUCH POLICY ACTIVITY SURROUNDING PRIVACY, AND SUCH A VARIED SELECTION OF INSTRUMENTS?

Reconciling the Contradiction



- It would be a lot worse?
- A distinction between private sector and public sector?
- A trading up of standards, but not of practices?
- The declining autonomy of democratic states?