

The GDPR's extraterritorial scope: proudly and successfully skiing down your privacy run in unfamiliar territory



First of all, today is January 28. Happy Data Privacy/Protection Day, everyone!

With the extraterritorial scope of GDPR, doing business abroad can be like skiing moguls for the first time. What can you do to keep your balance while working your way down the hill from one bump to the other? If moguls are not your cup of tea, one solution could be to groom your trail before you hit the slope.

1. Plan your way down the hill

Skiing down your information privacy terrain for the first time can be less intimidating if you plan your way down, even if the GDPR's extraterritorial scope will be bumpy. Companies targeting the EU face a double challenge: complying with the GDPR as well as the GDPR's "opening clauses", which are clauses that allow member states to adopt stricter or more flexible rules than the GDPR. One good example here is the processing of special categories of personal data (GDPR, Art. 9). Another example lies right in the recitals of the GDPR: the regulation only applies to living individuals, despite the fact that the French Data Protection Act also establishes the "digital last will and testament" ([Art. 85](#)), whereby data subjects

have the right to define guidelines regarding the use and disclosure of their personal data after their death.

Your strategy will be twofold: decide whether the GDPR is applicable to you and find out if there are any specific national requirements.

- To help you decide whether GDPR is applicable to you, refer to the [EDPB guidelines on the Territorial Scope of the GDPR](#).
- To help you out on your privacy journey, I drafted a preliminary list of GDPR opening clauses [here](#).

2. Take the lift to the top of the mountain

Before you start your way down, take a helicopter view. Privacy law can be tightly related to other legal requirements – labor law, legal rules on professional secrecy, consumer law – just to name a few. As written by Dan Shefet in his article “[Extraterritoriality, the internet and the right to be forgotten](#),” published in the ABA Journal, “*The real challenge to media companies targeting the EU is not the GDPR, but member state content legislation. The German Hate Speech law (NetzDG) and very soon the French similar law both impose fines up to 50m € (Germany) and 4% of global turnover (France).*”

Did you know that if your privacy documents are intended for French employees living in France, some of those documents absolutely require French translation? This is a subject matter that I will tackle in a subsequent issue of this newsletter.

3. Buddy up

If you want to do business in Europe, some foreign language expertise will be required to get access to the information you need. For each opening clause that is applicable to you, you’ll be able to gather the specific requirements applicable in your target country. You don’t speak the EU’s 24 official languages, do you? That’s ok – neither do I. This is where your networking skills will come into play. Partner with other privacy pros around the world. If you stumble and lose a ski, they’ll be able to help you out – unless you truly want the exercise from hiking up and down the mountain to recover your bits and pieces of equipment here and there.

4. Having fun yet? This is the time to shine on your way down the hill!

Ready to draft all your compliance documents? Cruising down fast is exciting – but don’t forget to slow down when trails merge. You might come across other skiers, snowboarders, bike riders or ... beautiful trees – but trees, nevertheless!

If you get lost along the way, don’t forget the courtesy patrol is here to help! In a world where more than 7,000 languages coexist, pairing up with a seasoned translator is a smart way to ski trees or bumps. Think of your translator as the best reader you’ll ever have. He or she is probably the only one who will pay attention to any serial commas and will not confuse the terms “personal data” and “personal information.” Instead of tripping on pieces of data protection authorities’ guidelines or legislative texts

you don't understand, ask your translator for a summary, a translation of an excerpt from a law, or a recommendation that you need to succeed in your targeted jurisdiction. Of course, you will absolutely want to:

- Keep an eye on the new documents published by the relevant supervisory authority of your targeted jurisdiction. For example, the French data protection authority (CNIL) just published its [strategic roadmap for 2019-2021](#). So did the [Belgian data protection authority](#).
- Be aware of the latest fine imposed by any relevant data protection authority. For instance, on December 17, 2019, the [Belgian DPA imposed a €15,000 fine](#) on a Belgian website based on the company's non-compliant cookie management and privacy policy.
- Get the latest takeaway from the relevant data protection authority's newsletter.
- Be aware of the targeted country's culture and plan your audience's reaction.
- Comply with your transparency and other legal requirements by making the information accessible to your targeted data subjects in a language they understand.

5. Don't forget to take in the view!

Did you know you could see the Grand Canyon from the Arizona Snowbowl ski resort? Look up, not down! When you've worked out the details of your privacy plan, don't forget to look up and see the business opportunities for your company! Once you have mastered your targeted European users' privacy principles, they'll be more eager to do business with you since they'll be confident you understand their unique cultural circumstances. For instance, you will be ready to treat an IP address like a piece of personal data and observe their "opt-in" rights to send them marketing communication.

Ready to expand your business into another European country? Get up on the lift again, choose another run, smile... and repeat!

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