Chapter 10
Is a Global Data Protection Regulatory Model Possible?

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10.1 Introduction

On 14 September 2007 Peter Fleischer, Google’s global privacy counsel, pleaded at a UNESCO conference for the setting up of global international privacy standards. At the same time, in parallel, he posted the following text on Google Public Policy Blog:

‘Google is calling for a discussion about international privacy standards which work to protect everyone’s privacy on the Internet. These standards must be clear and strong, mindful of commercial realities, and in line with oftentimes divergent political needs. Moreover, global privacy standards need to reflect technological realities, taking into account how quickly these realities can change.’

Such an advocacy of privacy was clearly an essay from Google’s officials to regain prestige notably after the revelation that Google had been keeping and using huge amounts of personal data collected from users’ web researches.1 Anyway, whatever the strategy and the sincerity of the appeal, it has had a worldwide repercussion due to the fact that it emerged from the largest web search engine company.

Precisely two years before, on 14 September 2005, a similar call for global harmonization of the protection of information privacy was launched by the world’s

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1 At the same time Google was trying to buy DoubleClick, the largest cyber-marketing company. This prospect of merging two huge data bases mobilized (real) privacy advocates who put forward the severe risk for privacy that such an operation would represent: ‘On April 20 2007 the Electronic Privacy Information Center (EPIC) filed a complaint with the US Federal Trade Commission to block Google’s planned acquisition of Internet advertiser DoubleClick. [...] Google is the internet’s largest search company. DoubleClick is the internet’s largest advertising company. Neither has done a particularly good job protecting online privacy and the combined company would pose a unique and substantial threat to the privacy interests of internet users around the globe.’ M. Rotenberg, ‘Google’s proposals on internet privacy do not go far enough’, Financial Times, 24 September 2007.
privacy and data protection Commissioners at their annual international conference
in Montreux, Switzerland. They adopted the Montreux Declaration entitled ‘The
protection of personal data and privacy in a globalized world: a universal right
respecting diversities’.

In this text, the privacy Commissioners stated that ‘It is necessary to strengthen
the universal character of this right in order to obtain a universal recognition of
the principles governing the processing of personal data whilst respecting legal,
political, economical and cultural diversities’. In addition, the Commissioners have
agreed to work towards this recognition of the universal nature of data protec-
tion principles. They committed themselves to work with governments as well as
international and supranational organisations with a view to adopting a universal
convention on data protection.

This declaration did not reach a wide public for sure but there is no doubt about
the sincerity and conviction of its authors.

In fact one could advocate that such international privacy standards have already
been defined since more than a quarter of century.² On 22 September 1980, the
Organisation for Economic Co-operation and Development (OECD) published its
Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.³
And on 28 January 1981 the Council of Europe adopted the Convention for the pro-
tection of individuals with regard to automatic processing of personal data.⁴ These
international texts contain what can be considered as the fundamental information
privacy principles.

So the question can be put whether there is still a need of global harmonization
of privacy/data protection standards. And if such a need exists, what could be the
content of such a global data protection model?

10.2 Is There a Need of Global Harmonization
of Data Protection Regimes Throughout the World?

The answer to the question about the real necessity of a harmonised and universal
protection of personal data is linked to the characteristics of the world in which we
live today, the so-called ‘information society’. We are facing an ever-increasing need
of free flows of data (1.1.) whereas new risks and threats arise from the development
of information technologies (1.2.).

² See for example Marc Rotenberg’s sarcastic reaction to Google’s proposal for international stan-
dards of privacy protection online: ‘This is an interesting proposal, since countries from America,
Europe and Asia announced global privacy standards more than 25 years ago.’ (op. cit.).
³ Available at: <http://www.oecd.org/document/18/0,3343,en_2649_34255,1815186_1,00.
html.
⁴ Available at: http://www.coe.int/t/e/legal_affairs/legal_cooperation/data_protection/documents/
international_legal_instruments