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Data protection

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Structure

- Background
- Legal framework
 - EU
 - National
- Administrative framework
 - Data Protection Authorities
- The Internet and social media
 - Targeted advertising
 - IP addresses
 - Cookies
 - Multiple http requests
 - Social media

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Data protection

- Definition?
- Data protection = data processing?

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Data protection- background

- EU concept
- Sweden – first law in EU on the *integrity* of personal data
⇒*Datalag* (1973:289)
- Germany – datenschutz (strongest protection)

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The legal framework



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EU law

- **Directive 95/46/EC** on the protection of individuals with regard to the processing of personal data and on the free movement of such data (Data Protection Directive)
- **Directive 2002/58/EC** concerning the processing of personal data and the protection of privacy in the electronic communications sector (E-Privacy Directive)
- **Directive 2002/21/EC** on a common regulatory framework for electronic communications networks and services
- **Directive 2006/24/EC** on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC
- General Data Protection Regulation (???)

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National law – main legal framework

- EU law
-  Sweden: Personuppgiftslag (1998:204)
 - PUL
-  UK: Data Protection Act 1998
 - DPA

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Directive 95/46



- Key instrument
- Establishes main framework for data processing
- Technology neutral
- Imposes positive actions upon **controllers**
- Establishes rights for **data subjects**

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Directive 95/46 - scope

- Art. 3(1) applicability

*this Directive shall apply to the **processing of personal data** wholly or partly by automatic means*
- Art.2(b) processing of data

***any** operation or set of operation or set of operations which is **performed upon personal data**, whether or not by automatic means*
- Art.3(2) limit

***not applicable** to processing by a natural person processing in the course of a **purely personal or household activity**, or national security etc.*

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Directive 95/46 – example

- Lindqvist C101/01

confirms that the publication of data on a webpage, where it is accessible to anyone visiting the page, even if the information is published in the course of what might seem to be a personal activity (Lindqvist published details of some of her fellow parishioners on her webpage), will not be treated as a personal or household activity, thereby making the processing come under the Directive.

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Directive 95/46 - scope

- Art. 4(1) national law applicable on the processing of personal data where:
 - a) Processing is carried out by a controller on the territory of the Member State
 - b) (...)
 - c) The controller is not established on Community territory (EEA) and, for the purpose of processing makes use of equipment, automated or otherwise, situated on the territory of the said Member State...
- Art. 4(2) in the circumstances described in 1(c), the controller **must** designate a representative established in the territory of that Member State.

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Directive 95/46 – personal data

- Art. 2(a) personal data
*any information relating to an **identified or identifiable natural person** (data subject)*

*An **identifiable person** is one who can be identified, **directly or indirectly**, in particular by reference to an **identification number** or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity*

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Directive 95/46 – personal data

- Name?
- DoB? Personal number?
- Face on a picture?
- Other parts of the body excl. face?
- Interests?
- UserID?
- IP address?

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Directive 95/46 - controller

- Art.2(d) controller
 - a natural or legal person, public authority, agency or any other body which alone or jointly with others **determines the purposes and means** of the **processing** of personal data...*

⇒ *it is the entity that has to meet the standards concerning data quality, and which has to implement various measures to meet the requirements of the Directive.*

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Directive 95/46 - controller

- Content providers?
- Website operators?
- E-shops?
- Newsletter operators?
- Social media operators – Facebook, LinkedIn?
- Users of such services?

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Directive 95/46

Rules of data processing

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Directive 95/46 – processing rules

- Certain standards prescribed by the Directive
- Art.6 – data quality
- Art.7 – legitimate processing
- Arts.10-11 – provision of information to data subjects
- Art. 12 – right to access data by data subjects
- Arts.16-17 – confidentiality and security safeguards
- Art.18 – obligation to notify domestic supervisory agency

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Directive 95/46 – quality of data

- Art.6 personal data must be:
 - (a) processed **fairly** and **lawfully**;
 - (b) collected for **specified, explicit** and **legitimate purposes** and not further processed in a way incompatible with those purposes.
 - (c) **adequate, relevant** and not excessive **in relation to the purposes** for which they are collected and/or further processed;
 - (d) **accurate** and, where necessary, **kept up to date**; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified;
 - (e) **kept** in a form which permits identification of data subjects **for no longer than is necessary for the purposes for which the data were collected** or for which they are further processed.

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Directive 95/46 – legitimate processing

- Art.7 personal data may be processed only if:
 - (a) the data subject has **unambiguously** given his **consent**; or
 - (b) processing is **necessary** for the **performance of a contract** to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or
 - (c) processing is necessary for **compliance with a legal obligation** to which the controller is subject; or
 - (d) processing is necessary in order to **protect the vital interests** of the data subject; or
 - (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or
 - (f) processing is necessary for the purposes of the **legitimate interests pursued by the controller** or by the third party or parties to whom the data are disclosed, **except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject** which require protection under Article 1 (1).

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Directive 95/46 – right of access

- Art.12 a data subject has the right to obtain from the controller:
 - (a) without constraint at reasonable intervals and without excessive delay or expense:
 - **confirmation as to whether or not data relating to him are being processed** and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed,
 - **communication** to him in an intelligible form **of the data** undergoing processing and of any available information as to their **source**,
 - (...)
 - (b) as appropriate the **rectification, erasure or blocking** of data the processing of which **does not comply** with the provisions of this Directive, in particular because of the incomplete or inaccurate nature of the data;
 - (c) notification to third parties to whom the data have been disclosed of any rectification, erasure or blocking carried out in compliance with (b), unless this proves impossible or involves a disproportionate effort

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Directive 95/46 – consent

Consent must be *freely given, specific* and *Informed*

Informed consent:

- ⇒ clear to a data subject what is consented to
- ⇒ how personal data is used - often hidden in T&Cs (small print)

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Directive 95/46 – consent

Types of consent: *express or implied*

- ⇒ express: sign, mark/click box etc.
- ⇒ implied: e.g. signing up to newsletter by simply providing an e-mail address, starting using a service etc.



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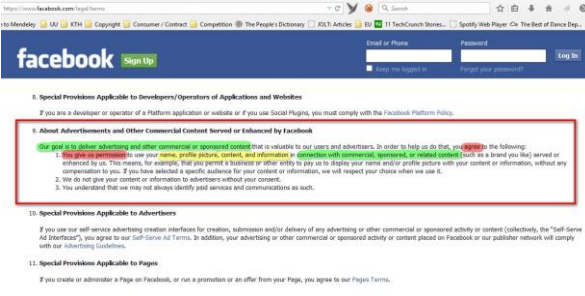
Directive 95/46 – consent and special categories of data

- Art.8(1) Absolute prohibition of processing of **special categories of data** = *revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex-life*
- Unless **express**, unambiguous consent has been provided to the processing of such data

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Directive 95/46 – consent and terms & conditions



8. Special Provisions Applicable to Developers/Operators of Applications and Websites

If you are a developer or operator of a Platform application or website or if you use Social Plugins, you must comply with the Facebook Platform Policy.

9. About Advertisements and Other Commercial Content Served or Enhanced by Facebook

Our goal is to deliver advertising and other commercial or sponsored content that is valuable to our users and advertisers. In order to help us do that, you agree to the following:

1. You agree to allow us to use your name, profile picture, content, and information in connection with commercial, sponsored, or related content (such as a brand you like) served or enhanced to us. This means, for example, that you permit a business or other entity to pay us to display your name and/or profile picture with your content or information, without any compensation to you. If you have selected a specific audience for your content or information, we will respect your choice when we use it.
2. We do not give your content or information to advertisers without your consent.
3. You understand that we may not always identify paid services and communications as such.

10. Special Provisions Applicable to Advertisers

If you use our self-service advertising creation interfaces for creation, submission and/or delivery of any advertising or other commercial or sponsored activity or content (collectively, the "Self-Serve Ad Interface"), you agree to our Self-Serve Ad Terms. In addition, your advertising or other commercial or sponsored activity or content placed on Facebook or our publisher network will comply with our Advertising Guidelines.

11. Special Provisions Applicable to Pages

If you create or administer a Page on Facebook, or run a promotion or an offer from your Page, you agree to our Pages Terms.

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Directive 2002/58/EC

- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (e-Privacy Directive)
- In comparison to DPD it specifically focuses on modern communication technologies – made clear in art.1(1)
- Introduced certain mandatory provisions regarding cookies and the provision of **clear** consent (25 May 2011 amendment – until then basically useless)

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Directive 2002/58

Art.5(3)

..the use of electronic communications networks to **store information** or to **gain access to information** stored in the terminal equipment of a subscriber or user is **only allowed** on condition that the subscriber or **user** concerned is **provided with clear and comprehensive information** in accordance with Directive 95/46/EC, inter alia about the **purposes of the processing**, and is **offered the right to refuse such processing** by the data controller.

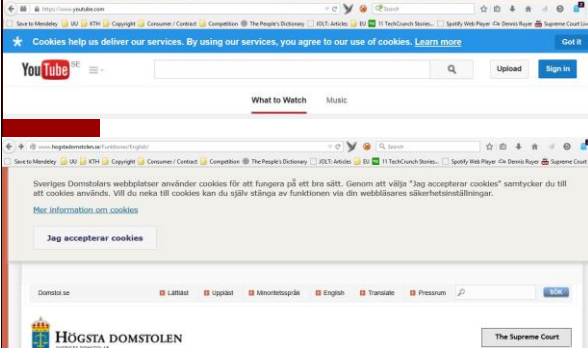
This shall not prevent any technical storage or access for the sole purpose of carrying out or facilitating the transmission of a communication over an electronic communications network, or as strictly necessary in order to provide an information society service explicitly requested by the subscriber or user.

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Cookies





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Data protection - compliance

- The data protection framework is obligatory
- Requirements are not followed if
 - Processing is illegitimate
 - Interferes with fundamental freedoms (right to privacy)

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Sanctions

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Supervisory framework



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Supervisory bodies



European Data Protection Supervisor





Sweden: Datainspektionen





UK: Information Commissioner's Office



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Advisory body

 Article 29 Working Party

http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/index_en.htm

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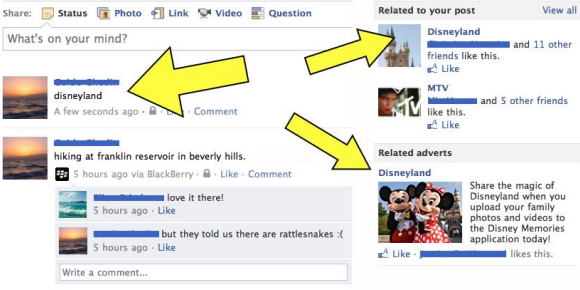
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The Internet and social media



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Targeted advertising - Facebook



Share:  Status  Photo  Link  Video  Question Related to your post View all

What's on your mind?

 **disneyland**
A few seconds ago ·  Like ·  Comment

 **hiking at franklin reservoir in beverly hills.**
5 hours ago via BlackBerry ·  Like ·  Comment

 **love it there!**
5 hours ago ·  Like

 **but they told us there are rattlesnakes :(**
5 hours ago ·  Like

Related to your post

 **Disneyland**
 and 11 other friends like this.
 Like

 **MTV**
 and 5 other friends like this.
 Like

Related adverts

 **Disneyland**
Share the magic of Disneyland when you upload your family photos and videos to the Disney Memories application today!
 Like ·  likes this.

www.facebook.com / <http://www.youngdigitallab.com>

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Targeted advertising - Facebook

- Users provide the information themselves
- Only a social requirement to have a Facebook account (not a legal obligation)

www.facebook.com

Basic Information

Sex:
Birthday:
Hometown:
Relationship Status:
Interested In:
Looking For:
Religious Views:

Personal Information

Activities:
Interests:
Favorite Music:
Favorite TV Shows:
Favorite Movies:
Favorite Books:

Education and Work

High School:



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Internet and social media

- Social media
- IP addresses
- Cookies
- Multiple http requests

collection of information

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targeted advertising



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Google Spain v AEPD C-131/12

- Personal information lawfully published by a newspaper on their website (La Vanguardia)
- Data appearing in conjunction with an announcement concerning real-estate auction connected with attachment proceedings for debt recovery
- Personal information visible (/searchable) in Google Search results
- Essentially: does the data subject have a right to request erasure of information from the Google Search results?



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Concluding remarks

- Can said to be a human right within the EU framework
- Consent – double-edged sword
- Privacy by law vs *privacy by design*

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Thank you for your attention!

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