

Digital Content Next

Legal and Legislative Committee
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Agenda

- The Future Without Safe Harbor - Presentation from Sarah Pearce (Partner, Cooley LLP - London Office)
- Snip.ly – What Is It and What Options Do Publishers Have?
- Miscellaneous

The Future without Safe Harbor

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attorney advertisement

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Background

- 23 September 2015, Advocate General Bot encouraged CJEU to find Safe Harbor invalid
- No guarantee of a “safe” transfer of personal data from the EU to the US, infringing EU citizen’s fundamental rights

The CJEU Decision

CJEU agreed with Bot and found significant shortcomings in the Safe Harbor framework:

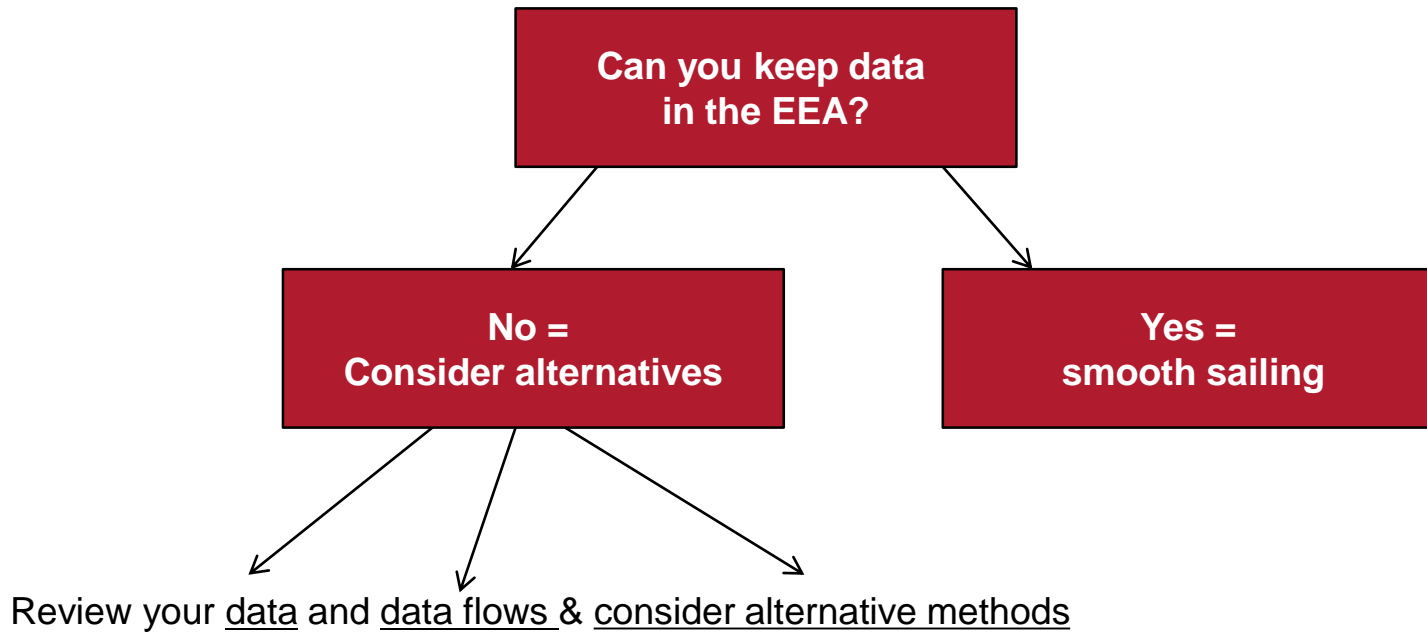
- Only applicable to US undertakings which adhere to it
- Public authorities have a “free pass”
- EU citizen’s fundamental rights ignored: (i) respect for private life and (ii) an individual’s right to pursue legal remedies

Safe Harbor invalid - what has changed?

- The law - with immediate effect
- Framework no longer offers adequate protection for the transfer of personal data from the EEA to the US
- Companies relying on Safe Harbor can no longer do so
- National Data Protection Authorities (DPAs) will expect companies to implement alternative methods of transfer

- No appeal, this is it
- All eyes on Ireland
- Each DPA will have own approach
- No indication of immediate enforcement methods
- BUT - organisations need to act quickly and practically

Where to start?



1. Model Contractual Clauses

- PROS: - *model agreements already available for your use*
- CONS: - *cannot be amended and often need to be registered or reviewed by DPAs*

2. Consent

- PROS: - *can be applied via notice form or tick-box to consumer*
- CONS: - *Depends on industry sector, Europe's high bar (fully informed, specific and freely given and revocable by the consumer)*

3. Anonymization

- PROS: *once complete, can apply to data in bulk for easy transfer*
- CONS: *Europe's high bar*

What about BCRs I hear you say?

- *Not for the faint hearted...*

How does this affect your industry?

US Media and Content Providers

- Need to employ alternative methods
- Consent is tricky: must consider the high bar the EEA sets re consent.

Consumers

- Serious concern around consumers' access to valuable digital services - impeding trade and innovation

Digital Marketers and Agencies

- Marketers may want to investigate whether it would be possible to obtain consent from individuals to transfer their data, but this is not an easy task - model clauses may be more appropriate.

Parallel political landscape

- Don't forget ongoing Umbrella agreement and EU/US negotiations
 - *Further pressure on US Negotiators?*
- Global Impact on privacy
 - *Will anything actually change in a post 9-11 world?*
 - *Snowden: revelations & repercussions*
- Which other countries are not providing a safe framework for transfer?
 - *Adequacy recognition in certain circumstances: (USA) & Canada*
 - *European adequacy recognition: Andorra, Argentina, Faroe Islands, Guernsey, Isle of Man, Israel, Jersey, New Zealand, Switzerland, Uruguay.*
 - *What about those not on the safe list? e.g. China, Middle East, Australia*
- Model clauses may not be enough?

Some closing thoughts...

- Safe Harbor was once described as the cornerstone for US/EU e-commerce, will the ruling and its repercussions curtail US companies looking to do business in the EU?
- Although businesses will have to work to implement alternatives, which can cost time and money, the process does not have to become onerous - we are here to help.
- Compliance should not be seen as a burden, but as a necessity – would you ride without a seat belt? An adequate framework is the belt protecting data travelling from the EEA to the US, and we suggest you buckle up!

- **Any questions?**



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Snip.ly – What is it?

- **Social Sharing Service**
 - Allows anyone to share a publisher's content along with a customized, overlaid message
 - The message can be a call to action or advertisement
 - Snip.ly creates a link to the new page so consumers view the content off the publisher site
 - Analytics and remarketing tools provided by Snip.ly

Snip.ly – What is it?

BBC - Homepage - Google Chrome

snip.ly/bceQ#http://www.bbc.com/

Apps Sports News TO READ date night ideas Office Parenting articles Native Advertising new york to do Recipes

MIKE Attach your branding and message to any page Get Sniply

BBC Sign in News Sport Weather Shop Earth Travel More Search

MONDAY, 12 OCTOBER

Turkish PM blames Ankara bombing on IS
The Islamic State group is the principal focus of investigation into the Ankara bombing that killed 97, Turkey's prime minister says.
EUROPE

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MAGAZINE

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Snip.ly – What Options Do Publishers Have?

- Publishers can view where content is being shared
 - Type in a URL for the list
 - Otherwise, no notification to publisher
- Publishers can block content from being shared
 - Opt Out Meta Tag or Opt Out Header
- <http://snip.ly/publishers/>

Miscellaneous

- House Energy and Commerce Subcommittee on Communications and Technology to resume hearing on Wed, Oct 21
 - “Broadcasting Ownership in the 21st Century”
- FTC Workshop (Nov 16) on Cross Device Tracking
 - DCN comments to differentiate between publishers’ use of cross device tracking (deterministic) and 3rd party tracking (probabilistic)
- 11th Circuit Court of Appeals Ruled in Ellis v Cartoon Network
 - “downloading an app for free....is not enough to make a user a subscriber under the VPPA...”