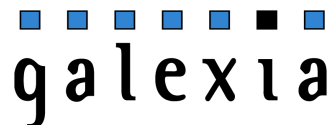


Legal Challenges to the International Transfer of Data

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http://www.galexia.com/public/about/news/about_news-id455.html

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UN advice on data protection and international data flows

■ **UN report:**

- » *Data protection regulations and international data flows: Implications for trade and development (April 2016)*

■ **Data protection is directly related to trade**

- » Too little protection can create negative market effects through affecting consumer confidence
- » Too much protection can overly restrict business activities and trade

■ **Ensuring that laws consider the global nature and scope of their application, and foster compatibility with other frameworks, is critical**



UN concerns on cross border data transfers / surveillance

■ Gaps in coverage

- » No laws, partial laws or laws that contain broad exemptions

■ Negative impact of data localization on trade and development

■ Balancing surveillance and data protection

- » Support for 'Necessary and Proportionate' test
- » Support for 'Narrowly Tailored' test
 - (in the US the term is 'as tailored as feasible')
- » Support for the provision of judicial redress for data subjects, regardless of nationality
- » Promotion of 'transparency reports' by business

Privacy Shield and SCCs: Three potential vulnerabilities to legal challenge

■ 1. Bulk Surveillance

- » Presidential Policy Directive 28 (PPD-28) 2014 allows bulk surveillance in six circumstances. Five are narrow in scope and tackle serious / significant risks. However, the sixth category is just the word: 'cybersecurity'. There is no additional test (e.g. serious risk) and no details are provided about the scope of this term.

■ 2. Independence of dispute resolution

- » European and US approaches to the independence of dispute resolution providers are contrasting, with stricter rules applying in Europe.

■ 3. Fine print exclusions

- » History of businesses relying on fine print exclusions (Safe Harbor, APEC CBPRs) to limit scope of their certification and / or to limit dispute resolution. This practice has reduced in recent years, but is open to challenge in the Privacy Shield and SCCs.

Next steps

■ **1. United Nations**

- » Promoting the development of consistent privacy laws, especially in developing nations
- » Discouraging data localization
- » Promoting a balanced approach to cross border data transfers and surveillance

■ **2. Privacy Shield**

- » The annual review is an opportunity to strengthen some protections
 - (e.g. promoting independent dispute resolution and removing fine print exclusions)
- » Clarify some of the framework text
 - (e.g. the scope of the ‘cybersecurity’ bulk surveillance exception)

■ **3. SCCs**

- » EC tasked with ensuring that the recent protections introduced in the Privacy Shield are extended to SCCs, and that a proper governance framework is established for SCCs (e.g. monitoring and regular reviews)

Further information

- United Nations Conference on Trade and Development (UNCTAD) – Global Cyberlaw Tracker
 - » http://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Global-Legislation.aspx
- Data protection regulations and international data flows: Implications for trade and development (April 2016)
 - » <http://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid=1468>
- BSA / Galexia Global Cloud Computing Scorecard (April 2016)
 - » <http://cloudscorecard.bsa.org/2016/>
 - » Look out for the updated version in mid-2017
- Galexia
 - » <http://www.galexia.com/>

