Centre for Information Policy Leadership (CIPL) Official Side Event at the
40th International Conference of Data Protection and Privacy Commissioners

The Concept of "Fairness" in Data Protection

Hotel NH Collection Brussels Grand Sablon
Rue Bondenbroek 2
1000 Brussels, Belgium
23 October 2018 | 14:30 – 15:50 AND 16:10 – 17:30

Data protection means, in essence, that personal data are to be processed in a "fair" manner. The concept of "fairness" is at the heart of the "fair information practice principles" guiding data privacy in the U.S., is required under the US FTC Act and is the cornerstone of Article 8 of the EU Charter of Fundamental rights as well as the GDPR. Other privacy regimes also incorporate this concept.

Fairness is a vague concept. Its precise meaning depends on the context in which data are being processed. It is, therefore, one of the more challenging principles in data protection. With the rise of AI, machine learning and automated decision-making, questions of what is fair or unfair under these laws only multiply. What does "fair" mean in the context of data protection? How should organisations make determinations about the "fairness" of their processing activities in a way that can reliably pass muster in the eyes of a data protection authority? What are the measurable elements and proof points of fairness? Are they sufficiently universal and objective so that efforts to meet "fairness" requirements will not proceed under a cloud of legal uncertainty?

These two 1.5 hour discussions will take a deep dive on these questions, drawing from the expertise and experiences of leading data protection authorities, industry representatives, technologists and academics. Among other issues, they will explore

- whether likely harm affects a determination of whether a processing activity is fair or unfair?

- whether the risk assessment process must consider "fairness" among other criteria?

- how DPAs expect businesses to approach the question of what is fair processing?

- the perspectives of technologists on the "fairness" requirement.

CIPL's examination of "fairness" occurs in the context of its recently launched project on *Artificial Intelligence and Data Protection: Delivering Sustainable AI Accountability in Practice.* The Project aims to describe the wide range of technological innovations encompassed by AI; address in specific terms the opportunities and challenges presented by these innovations to data protection laws and norms; describe practical steps for addressing today's challenges and those on the horizon; and engage in a frank discussion of issues that may not easily be resolved within existing laws and regulations and that may require new interpretations of traditional data protection principles.

Session I: 14:30 – 15:50
Moderator: Fred Cate, Senior Policy Advisor, CIPL
- ❖ Carl Wiper, Group Manager - Strategic Policy Projects, UK ICO
- ❖ Guilherme Roschke, Counsel for International Consumer Protection, US FTC
- ❖ Alison Howard, Assistant General Counsel, Microsoft
- ❖ Öztürk Taspinar, Lead Digital - Belux, Accenture
- ❖ Lanah Kammourieh Donnelly, Public Policy Manager, Google

Session II: 16:10 – 17:30

Moderator: Fred Cate, Senior Policy Advisor, CIPL

- ❖ Karolina Mojzesowicz, Deputy Head of Data Protection Unit, European Commission – DG Justice
- ❖ Giuseppe Busia, Secretary General, Italian DPA
- ❖ Christian D'Cunha, Head of Private Office of Giovanni Buttarelli, EDPS
- ❖ Julie Brill, Corporate Vice President & Deputy General Counsel, Microsoft
- ❖ Mary Ellen Callahan, Assistant General Counsel – Privacy, Walt Disney Company