

## Foreword

### The GDPR: It Came, We Saw, but Did It Conquer?

*Leila Javanshir\**

On February 1, 2019, the *Seattle University Law Review* held its annual symposium at the Seattle University School of Law. Each year, the *Law Review* hosts its symposium on a topic that is timely and meaningful. This year, privacy and data security professionals from around the globe gathered to discuss the current and future effects of the General Data Protection Regulation (GDPR) that was implemented on May 25, 2018. The articles and essays that follow this *Foreword* are the product of this year's symposium.

The GDPR fundamentally changed the way in which companies worldwide will handle their data. Data is a billion-dollar industry, and the GDPR applies to any global internet company using personal data collected in the European Union. The Regulation's reach is far and broad, as "personal data" encompasses everything from credit card information to IP addresses.<sup>1</sup> The essential purpose of the GDPR is to empower consumers by providing them with a better understanding of who collects their data and for what reason. Building on this, the Regulation allows for consumers to opt out of being the subject of data collection.

The truth is, we have only ourselves to blame for the European Union's heavy-handed Regulation. The online world has rapidly expanded, and internet companies have miserably failed at implementing safeguards when it comes to data collection and protection. The failure of industry self-regulation led the European Union to impose law in a way that demands a serious response: severe fines for noncompliance.<sup>2</sup>

---

\* Symposium Chair, *Seattle University Law Review*. The *Law Review* thanks the Continuing Legal Education Department at Seattle University School of Law for their partnership and the speakers of this year's symposium for their time and dedication.

1. Regulation 2016/679 of the European Parliament and of the Council of Apr. 27, 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), art. 4, 2016 O.J. (L 119) 33 (EU).

2. Daphne Keller, *The Right Tools: Europe's Intermediary Liability Laws and the EU 2016 General Data Protection Regulation*, 33 BERKELEY TECH. L.J. 287, 291 (2018).

The Regulation recognizes that almost every aspect of our lives revolves around data. From social media companies to banks, retailers, and government agencies, almost every service we utilize today requires the collection and use of personal data. The GDPR provides a much-needed framework defining how companies may collect and handle such data.

Among the significant effects of the GDPR is the way it transformed the vision of privacy within the United States. Shortly after the GDPR took effect, California followed the European Union's lead with the California Consumer Privacy Act (CCPA).<sup>3</sup> The GDPR and the CCPA illustrate a sincere effort on the part of policy makers to empower consumers and update laws in the digital age.<sup>4</sup>

As a trendsetter for data security and privacy in the United States, California should expect other states to follow its lead in pursuing legislation regarding privacy and data security. As evidence, Senate Bill 5376, the Washington Privacy Act,<sup>5</sup> was introduced in the Washington State Legislature on January 18, 2019. Like the GDPR, it provides consumers with the right to know what data is collected about them and whether that data is being sold to outside companies. The proposed bill also allows consumers to prevent their personal data from being used for marketing purposes.<sup>6</sup> The Washington State Privacy Act was discussed during this symposium by Washington State's Chief Privacy Officer, Alex Alben.<sup>7</sup> Both the CCPA and the Washington Privacy Act stem from the same philosophy as the GDPR: consumers have the right to know who is collecting their data and how their data is being used.

Some participants of this symposium, however, find that there may be other ways to ensure that those holding the data of consumers act as responsible stewards of personal information. Georgetown's Lindsey Barrett maintains that instead of enacting laws similar to the GDPR in the United States, those holding the data of consumers should be considered a fiduciary of the consumers to which that data belongs. Similar to the fiduciary duties of doctors and lawyers to patients and clients, information

---

3. California Consumer Privacy Act of 2018, CAL. CIV. CODE §§ 1789.100–198 (West 2018).

4. Daniel Sepulveda, *Lessons from the GDPR and CCPA for Congress*, IAPP (Oct. 22, 2018), <https://iapp.org/news/a/lessons-from-the-gdpr-and-ccpa-for-congress/> [<https://perma.cc/R59K-N6V5>].

5. Washington Privacy Act, S.B. 5376, 66th Leg., Reg. Sess. (Wash. 2019).

6. *Id.*

7. Alex Alben, *Privacy, Freedom, and Technology—or “How Did We Get into This Mess?”*, 42 SEATTLE U. L. REV. 1043 (2019).

fiduciaries (data collectors) should owe duties of care, loyalty, and confidentiality to consumers.<sup>8</sup>

The United States has an opportunity to be a leader in data protection and consumer privacy legislation and practices. The way in which the United States responds to the implementation of the GDPR will be a necessary step forward, starting a global conversation regarding privacy and data security in the digital age.

The implementation of the GDPR has had a substantial impact on business operations around the world. Through its harsh fines and far reach, the GDPR has compelled companies outside of the Europe Union to change the way in which they handle personal data by overhauling internal and external policies and procedures. Although many companies will now need to find new methods to attract consumers and generate revenue, the GDPR's full impact on the internet, consumer research, and data innovation may not yet be clear. The increased awareness the GDPR has brought to the collection and use of data, however, surely means that we will continue to see dramatic global changes as the world advances further into the digital age.

---

8. Lindsey Barrett, *Confiding in Con Men: U.S. Privacy Law, the GDPR, and Information Fiduciaries*, 42 SEATTLE U. L. REV. 1057 (2019).