



Council of Europe
Conseil de l'Europe

eCommerce
Week

1-5 April 2019
Palais des Nations, Geneva



From Digitalization to Development

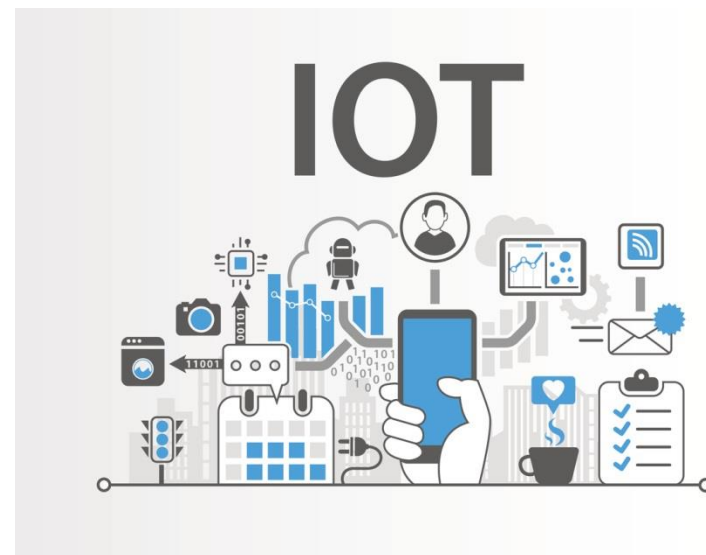
From digitilisation to development: the need for data protection

Sophie Kwasny
Geneva, 4 April 2019

Council of Europe
Conseil de l'Europe



Image courtesy:theantisocialmedia.com





THE UNIVERSAL DECLARATION OF Human Rights

Article 1 Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of justice, peace and good in the world.

Article 2 Disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.

Article 3 It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Article 4 It is essential to promote the development of friendly relations among nations.

Article 5 The peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have

determined to promote social progress and better standards of life in larger freedom.

Article 6 Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

Article 7 A common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

THE CHARTER (see section 100)

Recognize this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations in the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 6 Everyone has the right to life, liberty and security of person. This right shall be protected by law and everyone shall be afforded the same protection in a fair and public hearing.

Article 7 1. Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Everyone has the right to be treated as an individual.

Article 8 Everyone has the right to an effective remedy by the competent national authorities for violations of his rights.

Article 9 No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 11 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 12 No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13 1. Everyone has the right to free movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14 1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right shall not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts of terrorism.

Article 15 1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality.
3. No one shall be denied the right to acquire a nationality.

Article 16 1. Everyone has the right to marry and to found a family, which is the basis of the peace and stability of society.
2. Men and women of full age, without any limitation of race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
3. Marriage shall be entered into only with the free and full consent of the intending spouses.
4. The family is the natural and fundamental group unit of society and is entitled to protection by society and the law.

Article 17 1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18 Everyone has the right to freedom of thought, conscience and religion. This right shall include the freedom to change his religion or belief.

Article 19 Everyone has the right to freedom of opinion and expression; this right shall include the freedom to hold opinions without restriction and to receive and impart information and ideas without any interference by public authorities by means of censorship.

Article 20 1. Everyone has the right to peaceful assembly and association.
2. No one shall be compelled to belong to an association.

Article 21 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Every citizen shall have the right to participate in the election of the legislative, executive, administrative and judicial organs of the State, to be elected or to be eligible for election, to have access to public service, to hold any office, to be promoted or to be dismissed.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed through periodic and honest elections.
4. The rights and duties of the citizen are inseparable and correlative.

Article 22 Everyone has the right to such social, economic and cultural conditions as will ensure the fulfilment of the rights and freedoms set forth in this Declaration.

Article 23 1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work, to protection of employment, to just and favourable remuneration, to equality of opportunity to promotion, to form and to join trade unions, to participate in the activities and administration of the trade union of which he is a member, to strike, and to other benefits and advantages arising out of membership of a trade union.
2. Everyone has the right to a just and favourable remuneration ensuring for himself and his family a standard of living adequate to the health and well-being of himself and of his family, including housing, food, clothing, medical care, leisure, and social services.
3. Everyone has the right to equal pay for equal work.
4. No one shall be subjected to unjust discrimination or harassment in employment.
5. No one shall be arbitrarily deprived of his employment.
6. No one shall be subjected to arbitrary or unjust dismissal.
7. No one shall be subjected to arbitrary or unjust denial of his right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 24 Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, and to other benefits and advantages arising out of membership of a trade union.

Article 25 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including housing, food, clothing, medical care, leisure, and social services.
2. Everyone has the right to equal pay for equal work.
3. No one shall be subjected to unjust discrimination or harassment in employment.
4. No one shall be arbitrarily deprived of his employment.
5. No one shall be subjected to arbitrary or unjust dismissal.
6. No one shall be subjected to arbitrary or unjust denial of his right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 26 1. Everyone has the right to education. Education shall be free, at least in the elementary and technical schools. Technical and vocational education shall be made generally available and higher education shall be open to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial and religious groups, and shall foster the activities of the United Nations for the maintenance of peace.
3. Parents have a basic right in the choice of education for their children.
4. Education shall be free for all.
5. Education shall be available to all.
6. No one shall be subjected to arbitrary or unjust denial of his right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 27 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Every citizen shall have the right to participate in the election of the legislative, executive, administrative and judicial organs of the State, to be elected or to be eligible for election, to have access to public service, to hold any office, to be promoted or to be dismissed.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed through periodic and honest elections.
4. The rights and duties of the citizen are inseparable and correlative.

Article 28 Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including housing, food, clothing, medical care, leisure, and social services.

Article 29 1. Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, and to other benefits and advantages arising out of membership of a trade union.
2. Everyone has the right to a just and favourable remuneration ensuring for himself and his family a standard of living adequate to the health and well-being of himself and of his family, including housing, food, clothing, medical care, leisure, and social services.
3. Everyone has the right to equal pay for equal work.
4. No one shall be subjected to unjust discrimination or harassment in employment.
5. No one shall be arbitrarily deprived of his employment.
6. No one shall be subjected to arbitrary or unjust dismissal.
7. No one shall be subjected to arbitrary or unjust denial of his right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 30 Nothing shall be interpreted as authorizing any State, group or person to engage in any activity or to carry out any action which is aimed at the destruction of any of the rights and freedoms set forth herein.

Article 31 1. Everyone has the right to life, liberty and security of person. This right shall be protected by law and everyone shall be afforded the same protection in a fair and public hearing.
2. Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
3. Everyone has the right to be treated as an individual.

Article 32 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 33 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 34 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 35 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 36 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 37 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 38 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 39 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 40 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 41 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 42 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 43 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 44 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

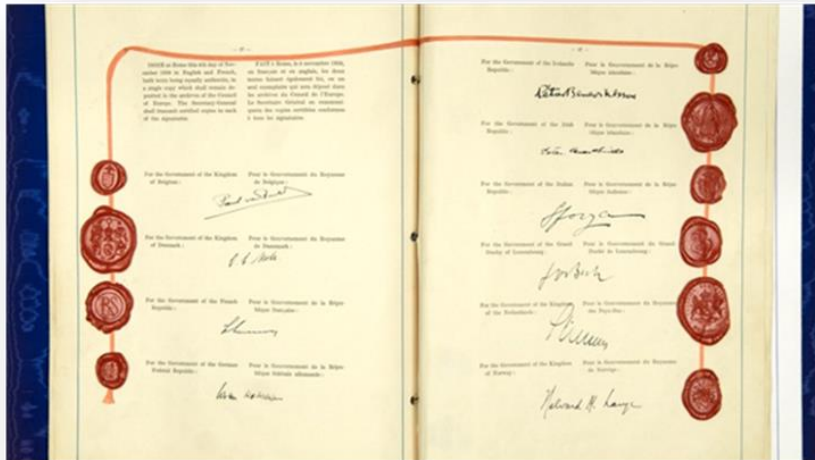
Article 45 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 46 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 47 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

Article 48 1. Everyone has the right to a fair and public hearing by the competent national authorities in the determination of his rights and obligations and of any criminal charge against him.

The European Convention/Court on Human Rights







Data protection in eCommerce

PROTECT

GROW

TRANSBORDER DATA FLOWS

Convention 108 (28 January 1981)

UNIQUE (no other international legally binding instrument in the field)

OPEN (any country in the world with a complying data protection legislation can request invitation to accede)

INFLUENTIAL (its principles = data protection principles taken up in all regions of the world)

Convention 108 today

54 countries bound by the Convention

= Argentina, Cabo Verde, Mexico,
Mauritius, Senegal, Tunisia, Uruguay

+ 47 CoE

pending: Burkina-Faso and Morocco

+ observers (Australia, Brazil, Canada, Chile,
Gabon, Ghana, Indonesia, Israel, Japan, South
Korea, Philippines, USA, New Zealand)

= NEARLY 70 COUNTRIES

Convention 108 - Modernisation

- reinforce the individuals' protection
 - strengthen the implementation
-
- **promote** as a universal standard
 - **preserve** general, simple, flexible and pragmatic character
 - **ensure coherence and even convergence** with other relevant legal frameworks

Convention 108 - Modernisation

January 2011 18 May 2018



Opening for signature on 10 October 2018

Convention 108+

Transborder dataflows (Article 14.1)

FREE FLOW OF DATA BETWEEN PARTIES

Limitation to free flow between Parties only where

- real and serious risk that the transfer would lead to circumventing the provisions of the Convention
- Party bound by harmonised rules of protection shared by States belonging to a regional international organisation. (//EU)



GDPR

REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 April 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)**



Tweet



Martin Selmayr
@MartinSelmayr



Convention 108 of @coe is "mother" of the #GDPR, the EU's directly applicable common data protection law as of 25/5/2018 #dataprotectionday

 Traduire depuis : anglais

28/01/2017 09:13

9 RETWEETS 10 J'AIME





Brussels, 10.1.2017
COM(2017) 7 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Exchanging and Protecting Personal Data in a Globalised World



2. THE EU DATA PROTECTION REFORM PACKAGE – A MODERN LEGISLATIVE FRAMEWORK THAT SUPPORTS INTERNATIONAL DATA FLOWS WITH HIGH PROTECTION

The reform of EU data protection legislation adopted in April 2016 puts in place a system that both ensures a strong level of protection and is open to the opportunities of the global information society. In giving individuals more control over their personal data, the reform strengthens consumer trust in the digital economy. In harmonising and simplifying the legal environment it makes it easier and less burdensome for companies, both domestic and foreign, to conduct their business activities in the EU, including through international data exchanges. The EU today combines openness for international data flows with the highest level of protection for individuals. It has the potential to become a hub for data services which require both free flows and trust.



3. INTERNATIONAL DATA TRANSFERS IN THE COMMERCIAL SECTOR: FACILITATING TRADE BY PROTECTING PRIVACY

Respecting privacy is a condition for stable, secure and competitive global commercial flows. Privacy is not a commodity to be traded.²⁴ The internet and digitization of goods and services has transformed the global economy and the transfer of data, including personal data, across borders is part of the daily operations of European companies of all sizes, across all sectors. As commercial exchanges rely increasingly on personal data flows, the privacy and security of such data has become a central factor of consumer trust. For instance, two-thirds of Europeans say that they are worried about having no control over the information they provide online while half of the respondents are concerned about becoming a victim of fraud.²⁵ At the same time, European companies operating in some third countries are increasingly faced with protectionist restrictions that cannot be justified with legitimate privacy considerations.

In the digital era, promoting high standards of data protection and facilitating international trade must thus necessarily go hand in hand. Whereas the protection of personal data is non-negotiable²⁶ in trade agreements, the EU regime on international data transfers, as outlined above, provides a broad and varied toolkit to enable data flows in different situations while ensuring a high level of protection.

International dimension of data protection

Rules on international data transfers

EU-US data transfers

Adequacy decisions

Binding Corporate Rules (BCR)

Standard Contractual Clauses (SCC)

Convention 108 and the GDPR

Recital 105

the Commission should take account of obligations arising from the third country's [...] participation in multilateral or regional systems [...]. In particular, the third country's accession to **Convention 108** should be taken into account.

Article 3

Territorial scope

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:
 - (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
 - (b) the monitoring of their behaviour as far as their behaviour takes place within the Union.

Universal ...

**Joseph A. Cannataci, Special Rapporteur
on the right to privacy**



Call for UN member countries to accede

**Annual report - UN Human Rights Council
(2019) Report A/HRC/40/63**

**Annual report - UN General Assembly
(2018)**

Report A/73/45712

"As an interim minimum response to agreeing to detailed privacy rules harmonised at the global level, ALL UN Member States be encouraged to ratify data protection Convention 108+ [...]."



Handbook on European Data Protection Law



Thank you for your attention

www.coe.int/dataprotection

dataprotection@coe.int

 @SophieKwasny

