

Berkeley Center for Law & Technology Berkeley IP & Tech Month

International Privacy - Year in Review 2022

Sources, Citations

by Lothar Determann and Helen Dixon¹

With data privacy legislation and enforcement, governments around the world focus on regulating technology companies. The European Union has been taking the lead, and more and more jurisdictions are following. We review this trend in our lecture at the Berkeley Center for Law and Technology at the University of California and provide (I) a global overview, (II) EU GDPR application and enforcement, (III) developments in other jurisdictions, (IV) key implications and recommendations for technology companies, and (V) an outlook.

I. Global Overview

1. Anupam Chander and Paul Schwartz, Privacy and/or Trade, 90 University Chicago Law Review – (forthcoming 2023), Available at SSRN: <https://ssrn.com/abstract=4038531>
2. Danielle Keats Citron and Daniel Solove, Privacy Harms, 101 B.U. L. Rev. 793 (2022)
3. Lothar Determann, Healthy Data Protection, 26 Mich. Tech. L. Rev. 229 (2020)
4. Paul M. Schwartz and Karl-Nikolaus Peifer, Transatlantic Privacy Law, 106 Georgetown Law Journal 115 (2017)

II. European Union General Data Protection Regulation – the Law of Everything

1. Span of complaints:

DPC Annual Report case studies: <https://dataprotection.ie/en/news-media/press-releases/data-protection-commission-publishes-2021-annual-report>

Irish Times article re span complaints: <https://www.irishtimes.com/business/technology/is-too-much-expected-of-the-data-protection-commission-1.4810366>

2. Full litigated example of complaint:

Agniezeka Nowak v DPC – judgment from recent Court of Appeal Ireland ruling: [https://www.courts.ie/acc/alfresco/858c5e82-109c-4a43-911a-751632e49c67/2022_IECA_95%20\(Unapproved\).pdf/pdf#view=fitH](https://www.courts.ie/acc/alfresco/858c5e82-109c-4a43-911a-751632e49c67/2022_IECA_95%20(Unapproved).pdf/pdf#view=fitH)

¹ Helen Dixon was appointed as Data Protection Commissioner for Ireland in 2014. Responsible for upholding the rights of individuals regarding how data about them is used, the role, among other things, requires regulation of a large number of US internet multinationals with European bases in Ireland. Lothar Determann teaches data privacy law at Freie Universität Berlin and University of California, Berkeley School of Law, and practices technology law as a partner at Baker McKenzie LLP in Palo Alto. This document contains citations and further reading recommendations supplementing the authors' lecture at the 2022 Berkeley IP and Technology Law Week of the Berkeley Center for Law and Technology, which reflects personal views of the authors and not any organizations they are affiliated with.

3. DPC can set its own procedures:

Link to High Court Judgment May 2021 in FB vs DPC - judgment of D. Barniville or a PDF of it:
https://www.courts.ie/acc/alfresco/3d6f87a9-93d1-4907-9d66-61c89df8c1a0/2021_IEHC_336.pdf/pdf#view=fitH

4. Increasing numbers of CJEU Preliminary Reference Cases on data protection law as national courts consider issues are not *acte clair*:

<https://curia.europa.eu/juris/liste.jsf?oqp=&for=&mat=PDON%252Cor&jge=&td=%3BALL&jur=C%2CT%2CF&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=1018095>

This is the link directly to the CJEU CURIA database with the search words “data protection” and displays the list of results related to GDPR and Directive 95/46.

[https://curia.europa.eu/juris/documents.jsf?text=%252directive%2B2002%252F58%2522&oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=594139](https://curia.europa.eu/juris/documents.jsf?text=%252directive%2B2002%252F58%2522&oqp=&for=&mat=or&jge=&td=%3BALL&jur=C%2CT%2CF&page=1&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=594139)

This is the link directly to the CJEU CURIA database with the search words “directive 2002/58” for the ePrivacy matter.

5. List of CJEU cases DPC most frequently cites in its decisions:

Weltimmo, C-230/14:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=168944&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Jehovah’s Witnesses Case, C-25/17:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=203822&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Facebook Fan Page Case, C-210/16:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=202543&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Digital Ireland Rights, Joined Cases C-293/12 and C-594/12:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=150642&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Schrems I, C-362/14:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Schrems II, C-311/18:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=228677&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=633640>

Huber, C-524/06:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=76077&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Schwarz, C-291/12:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=143189&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Breyer, C-582/14:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=184668&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

Very useful November 2021 Factsheet from November 2021 from CJEU on data protection: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-10/fiche_thematique_-_donnees_personnelles_-_en.pdf

6. Advocate General Bobek:

AG Opinion on the case C-13/16 Rigas:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=187183&doclang=EN>

AG Opinion on the case C-175/20 SIA ‘SS’ v Valsts ieņēmumu dienests:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=245557&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027385>

AG Opinion on the case C-245/20 X, Z v Autoriteit Persoonsgegevens:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=247105&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1027765>

7. Nowak v Data Protection Commissioner (20 December 2017) (C-434/16)

<https://curia.europa.eu/juris/document/document.jsf?jsessionId=9A0E59CF9224839D63C6E2919A5DBEDF?text=&docid=198059&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5389617>

8. Compensation cases – Article 82:

Pending reference cases to CJEU on compensation:

EU: four pending cases on referral questions on article 82 (right to compensation and non-material damage:

- **C-300/21 Österreichische Post**

[https://curia.europa.eu/juris/fiche.jsf?id=C%3B300%3B21%3BRP%3B1%3BP%3B1%3BC2021%2F0300%2FP&oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=300%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2647113\)](https://curia.europa.eu/juris/fiche.jsf?id=C%3B300%3B21%3BRP%3B1%3BP%3B1%3BC2021%2F0300%2FP&oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=300%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2647113)
case lodged on 12 May 2021

- **C-667/21 Krankenversicherung Nordrhein**

[https://curia.europa.eu/juris/fiche.jsf?id=C%3B667%3B21%3BRP%3B1%3BP%3B1%3BC2021%2F0667%2FP&oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=667%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2647113\)](https://curia.europa.eu/juris/fiche.jsf?id=C%3B667%3B21%3BRP%3B1%3BP%3B1%3BC2021%2F0667%2FP&oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=667%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2647113)
case lodged on 8 November 2021

- **C-687/21 Saturn Electro**
(<https://curia.europa.eu/juris/fiche.jsf?id=C%3B687%3B21%3BRP%3B1%3BP%3B1%3BC2021%2F0687%2FP&oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=687%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2647113>)
case lodged on 16 November 2021
- **C-741/21 Juris**
(<https://curia.europa.eu/juris/fiche.jsf?id=C%3B741%3B21%3BRP%3B1%3BP%3B1%3BC2021%2F0741%2FP&oqp=&for=&mat=or&lgreg=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=741%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&language=en&avg=&cid=2647113>)
case lodged on 1 December 2021

UK:

Lloyd v Google (<https://www.supremecourt.uk/cases/docs/uksc-2019-0213-judgment.pdf>) – UK Supreme Court

Warren v DSG [2021] EWHC 2168 (QB)

(<https://www.bailii.org/ew/cases/EWHC/QB/2021/2168.html>): (pre-GDPR case) the claimant as a Curry’s PC World customer (DSG is a retailer, its household name brand is Curry’s PC world) , who claimed his personal data was compromised during a cyber attack. The Court dismissed all the claims of the claimant

Rolfe & Ors v Veale Wasbrough Vizards LLP [2021] EWHC 2809 (QB) (07 September 2021)

is that the courts are not inclined to award compensation for “de minimus” or technical infringements (misdirected school email in UK
<https://www.bailii.org/ew/cases/EWHC/QB/2021/2809.html>

It might be a different trend:

Ashley v Amplifon Ltd [2021] EWHC 2921 (QB):

([https://uk.westlaw.com/Document/IF68E8280417011EC9E388EB189452211/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)&firstPage=true](https://uk.westlaw.com/Document/IF68E8280417011EC9E388EB189452211/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)&firstPage=true)) the Claimant sought damages arising from the inadvertent disclosure of their employment contract to another employee. Whilst, unlike Rolfe case, the Claimant’s claim survived strike-out and was remitted to the County Court for determination.

However, “de minimus” doctrine was also applied here:

Johnson v Eastlight Community Homes Limited [2021] EWHC 3069 (QB)

(<https://www.bailii.org/ew/cases/EWHC/QB/2021/3069.html>): It concerned information about the Claimant, a tenant of the Defendant, sent in error to another tenant. The Court followed previous case law and said that the de minimis principle and the Jameel principle apply to cases involving data protection breaches. However, by a “narrow margin” the Court was not persuaded to strike out the claim entirely, provided that it was heard in a court more appropriate to dealing with low value claims. Accordingly, the Court required the surviving data protection claim to be transferred to the County Court Small Claims Track.

Germany:

In particular, the courts clarified that claimant must substantiate that the GDPR infringement resulted in objectively significant and noticeable social or personal disadvantages, e.g. in form of a public exposure or humiliation (see **Karlsruhe Regional Court** (“*Landgericht*”), judgment of 2 August 2019, **case no. 8 O 26/19** - <https://openjur.de/u/2293311.html>). Mere fears of disadvantages due to an unauthorized disclosure of personal data (as in the case of the **Hamburg Regional Court** in its judgment of 4 September 2020, **case no. 324 S 9/19** - <https://www.rechtsprechung-hamburg.de/bsha/?query=DOKNR%3AJURE200013067#focuspoint>) or simply the uneasy feeling that one’s personal data could be used by third parties without authorization as a result of a data breach (see the case of the **Frankfurt am Main Local Court** in its judgment of 10 July 2020, Case No. 385 C 155/19) were not considered sufficient for a claim under Art. 82 GDPR.

Netherlands:

Last year the **Administrative Court in Rotterdam** awarded (<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2021:6822>) compensation for **non-material damages** in the amount of EUR 2,500 for a **GDPR violation**. In this case, the applicant had asked the municipality of Rotterdam several times to **delete certain of her personal data** (in Dutch). For a first comment in English see at https://www.lexology.com/library/detail.aspx?g=e598566b-4715-4ee5-b5ed-56f0c0e27a33&utm_source=lexology+daily+newsletter&utm_medium=html+email+-+body+-+general+section&utm_campaign=lexology+subscriber+daily+feed&utm_content=lexology+daily+newsletter+2021-09-15&utm_term=

9. **DPC Larger-scale inquiries** – can be complaint-based or own volition:

www.dataprotection.ie/en/dpc-guidance/law/decisions-made-under-data-protection-act-2018

10. **WhatsApp EDPB Decision to DPC and Final Decision of DPC Links:**

EDPB decision art 65: https://edpb.europa.eu/our-work-tools/our-documents/binding-decision-board-art-65/binding-decision-12021-dispute-arisen_en

DPC final decision: https://www.dataprotection.ie/sites/default/files/uploads/2022-03/Full_decision_WhatsApp_Ireland-August_2021.pdf

Annulment action before General Court of EU:

CJEU (General Court) action of annulment [*WhatsApp Ireland v Comité européen de la protection des données*, Case T-709/21]:

[https://curia.europa.eu/juris/fiche.jsf?id=T%3B709%3B21%3BRD%3B1%3BP%3B1%3BT2021%2F0709%2FP&oqp=&for=&mat=or&lgrec=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=709%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252Ctrue%252Cfalse&language=en&avg=&cid=4006516](https://curia.europa.eu/juris/fiche.jsf?id=T%3B709%3B21%3BRD%3B1%3BP%3B1%3BT2021%2F0709%2FP&oqp=&for=&mat=or&lgrec=en&jge=&td=%3BALL&jur=C%2CT%2CF&num=709%252F21&dates=&pcs=Oor&lg=&pro=&nat=or&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse&language=en&avg=&cid=4006516)

11. **FB x 12 Breaches DPC decision: DPC press release:** <https://www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-announces-decision-meta-facebook-inquiry>

12. **FB Transfers Case Links on DPC website:** our DPC’s webpage on SCCs Litigation: https://www.dataprotection.ie/en/dpc-guidance/law/scclitigation#_Toc75954092

13. Cross-Border Complaint Report DPC:

<https://www.dataprotection.ie/sites/default/files/uploads/2022-03/DPC%20statistical%20report%20on%20OSS%20cross-border%20complaints.pdf>

14. Children – Guidance <https://dataprotection.ie/en/news-media/latest-news/dpc-publishes-final-version-childrens-fundamentals>

III. Developments in other Jurisdictions

1. **EU adequacy reviews of other countries laws:** Based on Art. 45 GDPR, the European Commission has the power to determine whether a country outside the EU offers an adequate level of data protection. The European Commission has so far recognised:
 - a. **Andorra** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0625>
 - b. **Argentina** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0490>
 - c. **Canada (commercial organisations)** - <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32002D0002>
 - d. **Faroe Islands** - <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32010D0146>
 - e. **Guernsey** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0821>
 - f. **Israel** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011D0061>
 - g. **Isle of Man** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004D0411>
 - h. **Japan** - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.076.01.0001.01.ENG&toc=OJ:L:2019:076:TOC
 - i. **Jersey** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008D0393>
 - j. **New Zealand** - <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32013D0065>
 - k. **Republic of Korea** - https://ec.europa.eu/info/files/decision-adequate-protection-personal-data-republic-korea-annexes_en
 - l. **Switzerland** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000D0518>
 - m. **The United Kingdom** under:
 - i. the **GDPR** (https://ec.europa.eu/info/files/decision-adequate-protection-personal-data-united-kingdom-general-data-protection-regulation_en) and
 - ii. **LED** (https://ec.europa.eu/info/files/decision-adequate-protection-personal-data-united-kingdom-law-enforcement-directive_en)
 - n. **Uruguay** - <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0484>
2. **Brazil:** <https://iapp.org/resources/article/brazilian-data-protection-law-lgpd-english-translation/>
3. **Brazil:** National Consumer Secretariat fines bank for using data without consent of elderly consumers - <https://www.gov.br/mj/pt-br/assuntos/noticias/secretaria-nacional-do-consumidor-multa-banco-por-utilizar-dados-sem-consentimento-de-consumidores-idosos>

4. **China:** Lothar Determann, Zhenyu (Jay) Ruan, Tingting Gao and Jonathan Tam, China's draft Personal Information Protection Law, 4 *Journal of Data Protection & Privacy* 7 (2021).
5. **China:** Cyberspace Administration of China, Notice on the Removal of 25 Apps including DiDi (July 4, 2021), http://www.cac.gov.cn/2021-07/09/c_1627415870012872.htm.
6. **China:** Jyh-An Lee, Hacking into China's Cybersecurity Law, 53 *WAKE FOREST L. REV.* 57 (2018).
7. **China:** Graham Greenleaf & Scott Livingston, China's New Cybersecurity Law - Also a Data Privacy Law?, 144 *PRIVACY LAWS & BUS. IN'L REP.* 1-7 (2016).
8. **India:** Lothar Determann and Chetan Gupta, Indian Personal Data Protection Act, 2018: Draft Bill and Its History, Compared to EU GDPR and California Privacy Law, 37 *Berkeley Journal of International Law* 481 (2019).
9. **Mexico:** Ley Federal de Protección de Datos Personales en Posesión de los Particulares) of 2010. <https://www.diputados.gob.mx/LeyesBiblio/pdf/LFPDPPP.pdf> ("LFPDPPP").
10. **Mexico:** <https://www.globalcompliancenews.com/2021/05/02/mexico-geolocation-of-mobile-devices-for-financial-transactions/>
11. **Russia:** Edward Bekeschenko, Lothar Determann, Vadim Perevalov and Inna Wood, New Russian Data Residency Law: Impact on your business, 135 *Privacy Law & Business* 1 (2015); co-authors.
12. **Russia:** Lothar Determann, Privacy and Data Protection, *Moscow Journal of International Law* 2019 No. 1. P. 18-26.
13. **Thailand:** Personal Data Protection Act B.E. 2562 (2019) access via <https://www.mdes.go.th/law/detail/3577-Personal-Data-Protection-Act-B-E--2562--2019->.
14. **Thailand:** Supreme Court Decision No. 4893/2558, access via <http://deka.supremecourt.or.th/>
15. **Turkey:** website of data protection authority: <https://kvkk.gov.tr/en/>
16. **Turkey:** Updates on cases and legislation: www.esin.av.tr/2022/04/01/data-protection-newsletter-april-2022/

IV. Key Implications and Considerations for Technology Companies

Determann's Field Guide to Data Privacy Law, 5th Ed. (2022)