

# Future-proofing the European Privacy Regime

Ideas and discourse coalitions in the public consultation process  
of the General Data Protection Regulation

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10 November, 2017

Context

Results

Discussion



# Context



# Privacy protection as a societal issue



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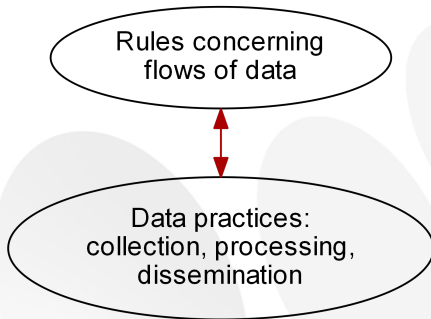


Image 1

Who owns and governs the future of privacy?  
How does the future of privacy get made?



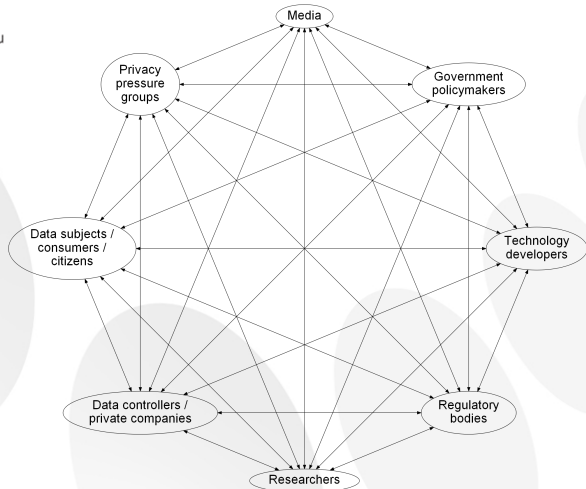


Image 2: Privacy regime (Bennett and Raab 2006)

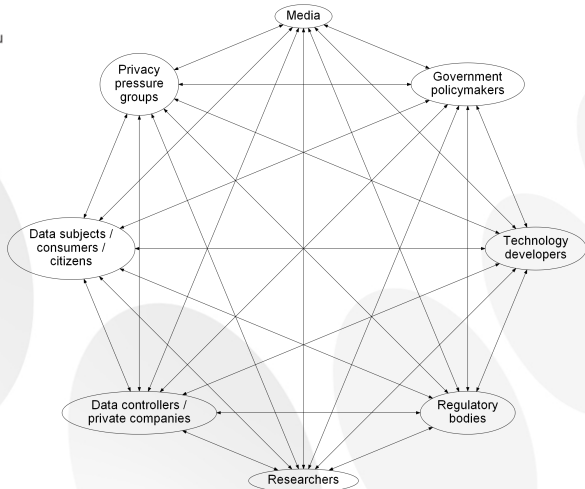


Image 2: Privacy regime (Bennett and Raab 2006)

- ▶ Ideas and storylines of actor coalitions (Schmidt 2008; Leifeld and Haunss 2011)



## Expansion and narrowing in the negotiation process

- ▶ **Expansion:** inclusion of new actors and ideas
- ▶ **Narrowing:** selection and institutionalisation

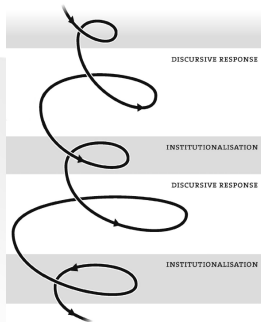


Image 3: Discursive-institutional spiral (Besten, Arts, and Verkooijen 2014)

## Case and material

- ▶ EU data protection reform (2009 onwards)
  - ▶ General Data Protection Regulation will become enforceable from 25 May 2018
- ▶ Two public stakeholder consultations
  1. *Consultation on the legal framework for the fundamental right to protection of personal data (2009)*
  2. *Consultation on the Commission's comprehensive approach to personal data protection in the European Union (2011)*



## Research questions

How are ideas of the future used to make the future of privacy protection?



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What kinds of *anticipatory assumptions* are embedded in the storylines of stakeholder coalitions?



## Anticipatory assumptions

- ▶ Athematic anticipatory assumptions: *how* actors think about the future rather than *what* they think about the future
- ▶ Anticipatory assumptions are *performative* (Lente 2012)



## Five dimensions of anticipatory assumptions (Ahvenharju, Minkkinen, and Lalot under review)

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Dimension	Description
Time perspective	How time is conceived; the 'timescape' (Adam 1998)
Agency beliefs	Sense of being able to influence the future
Openness to alternatives	Imagination, critical thinking, perceiving alternatives
Systems perception	Systemic and holistic thinking, perceiving emergent effects
Concern for others	Ethical commitment to better futures for others

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# Results



## Two discourse coalitions

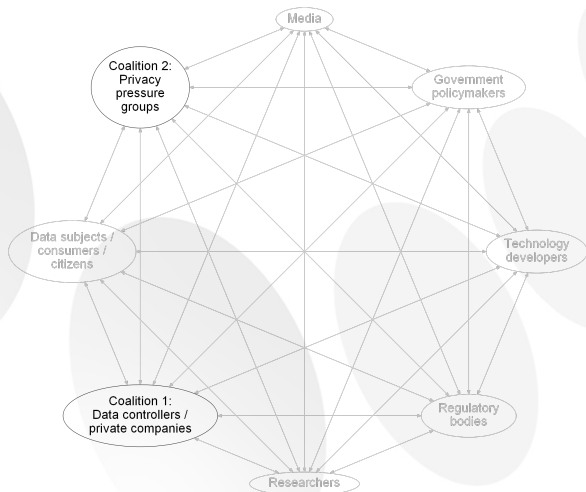


Image 4: Two discourse coalitions





## 'Industry' coalition: storyline

- ▶ Privacy enables **trust** in the economy
- ▶ **Trust** companies to provide privacy solutions
- ▶ **Trust** consumers
- ▶ 'Future-proofing' the privacy regime means making it more adaptive and flexible



## 'Industry' coalition: anticipatory assumptions

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Dimension	Argument
Time perspective	Disruption: new era requires adaptivity
Agency beliefs	Trends emerge on the market, companies react and anticipate
Openness to alternatives	Privacy protection rules are questioned, business practices are not questioned
Systems perception	Complex global networks of data processing
Concern for others	Utilitarian ethics and economic sustainability

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## 'NGO' coalition: storyline

- ▶ Privacy is a **fundamental right** which protects human **dignity**
- ▶ Mass collection and processing of personal data is an ethical issue which relates to **power** and autonomy
- ▶ 'Future-proofing' the privacy regime means establishing strict rules to safeguard individuals' rights



## 'NGO' coalition: anticipatory assumptions

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Dimension	Argument
Time perspective Agency beliefs	State of emergency: now is the time to act NGOs and citizens are in a defensive position against powerful others
Openness to alternatives	The digital economy needs to be reconfigured
Systems perception	Emergent systemic harms due to mass surveillance
Concern for others	Deontological ethics and protecting fundamental rights

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# Discussion



## Discussion

- ▶ Clarity on privacy conception: a means or an end?
- ▶ Systemic solutions to systemic risks
  - ▶ 'Industry' coalition: individualised risks, systemic (market) solutions
  - ▶ 'NGO' coalition: systemic risks, centralised solutions
  - ▶ Third way? Suitably complex governance of complex risks
- ▶ Reflexive anticipation is needed
  - ▶ Understanding of storylines and anticipatory assumptions enables constructive conflict (Cuppen 2009)
  - ▶ Acknowledgment of both systemic challenges and our agency in shaping the future



Thank you!

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## Analysed consultation responses by actor type

	Legal framework	Comprehensive approach
Citizen	4	2
Company	19	31
European industry organisation	13	22
Global industry organisation	5	10
National industry organisation	7	14
Non-EU industry organisation	2	5
Not-for-profit organisation	10	15
Professional organisation	3	3
Public authority	6	15
Research organisation	2	2
Sum	71	119





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