



Trade agreements and data flows: Safeguarding the EU data protection standards

Joint INTA/LIBE Public Hearing
European Parliament

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16. June 2015

Data flows, localisation and global value chains: offensive and defensive interests at stake



Three main messages today:

1. Consumers **on both sides** of the Atlantic are **concerned** and **want better privacy**
2. **Failure of Safe Harbour** to protect European Citizens
3. **Trade agreements are not** the place to regulate privacy and data protection



1. Offensive interests

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European Consumers want:

- **Control** over their personal data;
- **Transparency** – they want to know what organisations will do with their personal data;
- To **understand** the different purposes and benefits of data sharing;
- **Security** of their personal data; and
- Specific **rights** of access, deletion and portable personal data.

Based on “Data Protection Rights: What the public want and what the public want from Data Protection Authorities”.
Prepared by the ICO for the European conference of Data Protection Authorities, Manchester - May 2015.

1. Offensive interests in the US



US consumers *also* care about their privacy:

- **91%** “agree” that consumers **have lost control over how personal information is collected and used** by companies.
- **88%** “agree” that it would be very **difficult to remove inaccurate information about them online**.
- **80%** say they are **concerned about third parties like advertisers** accessing the data they share on social networks.

Pew Research “Public Perception of Privacy and Security in the Post Snowden Era”, November 2014:
<http://www.pewinternet.org/2014/11/12/public-privacy-perceptions/>

1. Offensive interests in the US (cont)



American consumers also want more privacy:

- **91%** agree that it is **unfair to collect information about me without my knowing in exchange for a discount.**
- **71%** agree that it is **unfair for an online or physical store to monitor what a user is doing online**, in exchange for the store's wireless internet, or Wi-Fi, without charge.
- **55%** agree that it is not okay for a store to **use information it has about me to create a profile that improves the services** they provide for me.

Report from the University of Pennsylvania and the University of New Hampshire "The Tradeoff Fallacy: How Marketers Are Misrepresenting American Consumers And Opening Them Up to Exploitation", June 2015:



«The tradeoff fallacy»

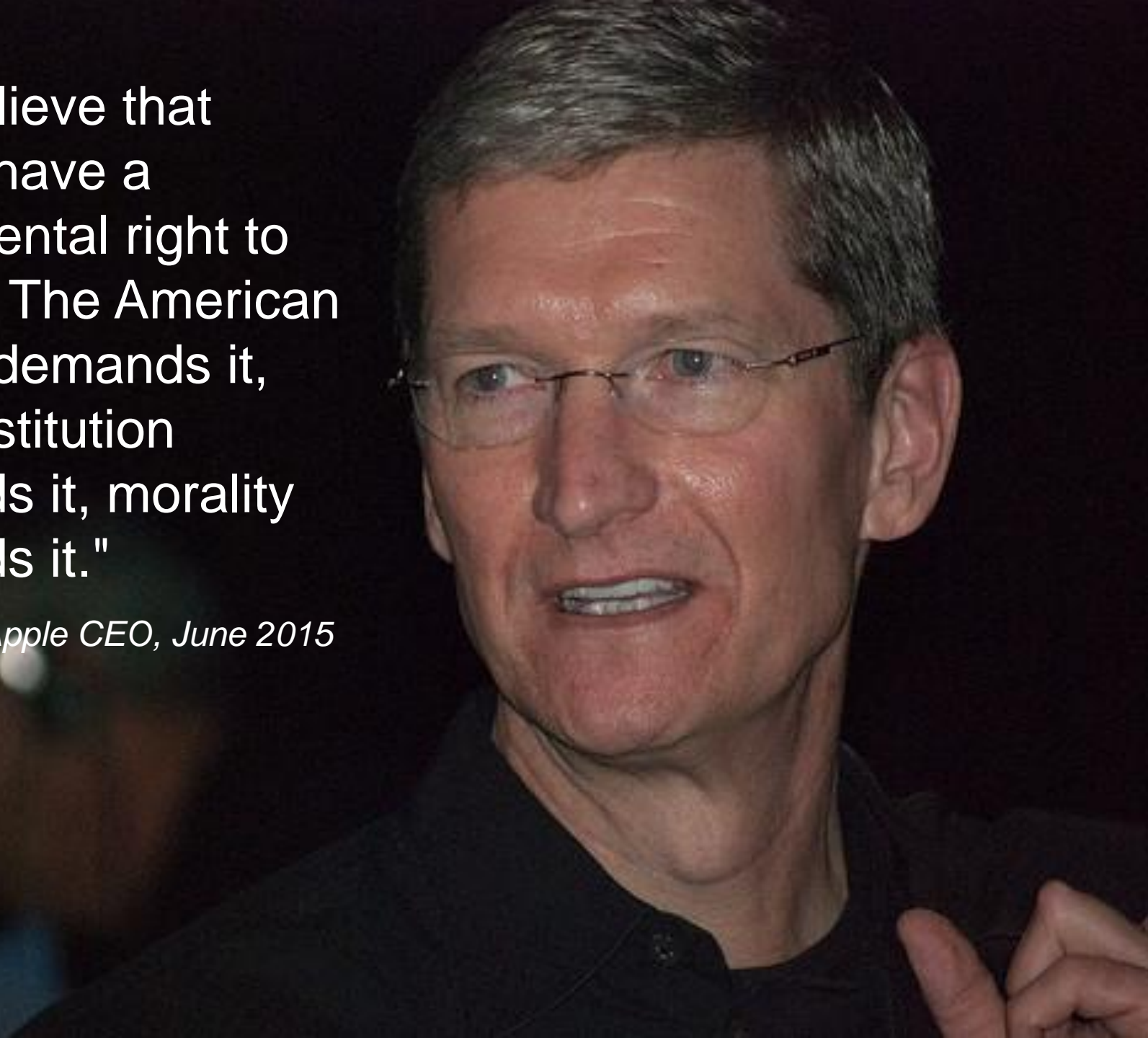
"We believe the customer should be in control of their own information. You might like these so-called free services, but we don't think they're worth having your email, your search history and now even your family photos data mined and sold off for god knows what advertising purpose. And we think some day, customers will see this for what it is."

Tim Cook, Apple CEO, June 2015



“We believe that people have a fundamental right to privacy. The American people demands it, the constitution demands it, morality demands it.”

Tim Cook, Apple CEO, June 2015





2. Safe Harbour

2. Safe Harbour does not protect sufficiently



In 2014 the Center for Digital Democracy filed a complaint against 30 US data brokering companies for breaching Safe Harbor:

- Do **not adequately disclose** their actual data collection practices;
- **Inaccurately classify** themselves as data processors instead of data controllers, which relieves them of certain obligations under EU law;
- Are **not transparent enough** about changes to their corporate structures that impact consumers;
- **Fail** to provide meaningful, easy-to-find **opt-out mechanisms** that EU consumers can utilize to stop the collection and use of their personal data; and



What is the point of thinking we can make consumers consent when studies have shown it will take each consumer

25 days a year

to read all the terms the encounter throughout the year?

Others on the issue of consent



“The framework for notice and consent is also becoming unworkable as a useful foundation for policy...

Only in some fantasy world do users actually read these notices and understand their implications before clicking..”

«Report to the President on Big Data and Privacy: a technological perspective» May, 2014.

Safe Harbour: Facebook



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Consumer Groups Urge FTC to Halt Facebook Data Collection Program

📅 July 28, 2014 👤 Richard

A collection of privacy and consumer groups from the United States and Europe has asked the Federal Trade Commission to force Facebook to suspend a recently installed program that mines information on sites that users' visit around the Web in order to serve them interest-based ads. The groups say that Facebook's program "directly contradicts its previous statements" about privacy and user tracking.

Safe Harbour: Facebook





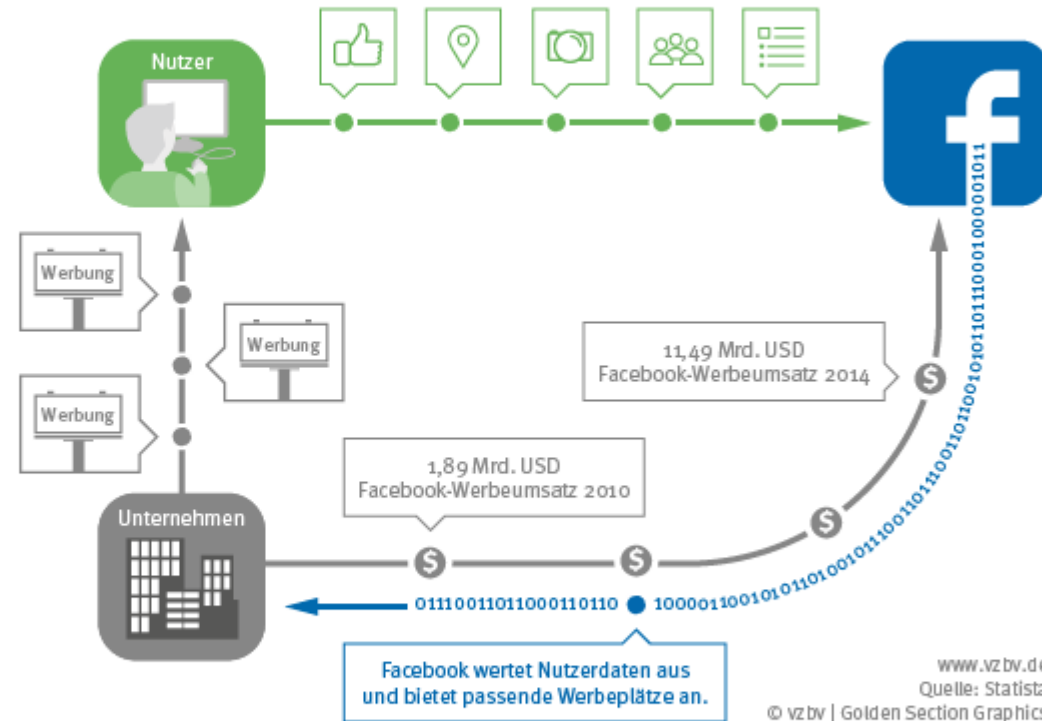
Facebook führt Nutzer in die Irre

**Die Facebook-Währung:
DATEN**

Nutzerinnen und Nutzer zahlen kein Geld für die Benutzung von Facebook. Dafür nutzt Facebook sämtliche Daten der Nutzer und verkauft diese in Form von personalisierten Werbeflächen an werbetreibende Unternehmen.

Dabei gilt: Je genauer das Nutzerprofil und die Steuerung des Werbeangebots, desto teurer kann der Werbefläche verkauft werden. Jede Information über einen Nutzer ist für Facebook daher bares Geld.

verbraucherzentrale
Bundesverband



www.vzbv.de
Quelle: Statista
© vzbv | Golden Section Graphics

Der Verbraucherzentrale Bundesverband (vzbv) hat gegen Facebook erneut ein Unterlassungsverfahren wegen zahlreicher Rechtsverstöße eingeleitet und das Unternehmen am 23. Februar 2015 abgemahnt. Nach Auffassung des vzbv verstoßen insgesamt 19 Klauseln aus den Nutzungsbedingungen und der Datenrichtlinie gegen geltendes Recht. Als irreführend bezeichnet der vzbv unter anderem die Aussage auf der Startseite von Facebook: „Facebook ist und bleibt kostenlos.“

Réseaux sociaux



Déjà
15 000 signataires !

Pétition « Je garde la main sur mes données »

Des millions d'internautes partagent leurs données personnelles (messages, photos, vidéos) avec leur entourage sur les



3. Conclusion

Trade agreements and data protection

Trade agreements not the place to regulate data protection and privacy

- Not accept that privacy and data is considered as a trade barrier; EU data protection legislation cannot be deemed an 'arbitrary or unjustifiable discrimination' to transatlantic trade.
- The EU should refrain from negotiating data flows and data protection rules under TTIP pending approval of the data protection reform package by the European Parliament and the Member States.
- The EU should introduce a horizontal clause that indicates that EU data protection rules apply to all products and services that are offered to EU consumers or
- Exceptions explicitly based on Article XIV of the General Agreement on Trade in Services (GATS) or similar safeguards

**For more information, feel
free to contact me:**

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Tnx! :D