

**Global Data Protection Regulations**

**G D P R**

**Are You Ready?**

Presented by MSK Partners  
**Susan Kohn Ross & Aaron Wais**

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**Presenter Introductions**

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**European Economic Area –  
 Affected Countries**

- Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lichtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.



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**Today's Key Topics**

- Do you offer goods or services to individuals in the covered countries (e.g., e-commerce, capital raising, fund raising, immigration)?
- Do you employ individuals in one or more of these countries?
- Do you monitors the behavior of individuals in any of these countries?
- Do you collect, store, or process the personal data of living individuals in the EEA on behalf of others?



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**Impact**

- Effective May 25, 2018
- Individuals who are EEA residents
- Do you have employees within the region?
- Do you have operations in the region?
- If not, how is your company impacted?



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**GDPR Article 4(1)**

'Personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;



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### GDPR Article 4(2)

'Processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;



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### GDPR Article 4(7)

Data controller means the party that “determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law.”



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### GDPR Article 4(8)

Data processor “means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.”



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### GDPR Standards – Article 5

- Accountability – are you the data controller or processor?
- Lawfulness, fairness and transparency – why do you need the data?
- Purpose limitation – keep only what you need for the intended purpose(s);
- Data minimisation – keep only the minimum data needed for only the minimum amount of time;
- Accuracy – how does the data get corrected/deleted?
- Storage limitation – how long do you keep it?
- Integrity and confidentiality – keep it safe!
- Accountability – who messed up and how?



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### Personal Data

**Personal Data**  
Any information relating to a data subject


**Identifiable**  
Can be identified, directly or indirectly by reference to an identifier

**Data Subjects**

**Identifiers**

- Physical factor
- Physiological factor
- Genetic factor
- Mental factor
- Economic factor
- Name
- Identification number
- Location data
- Online identifiers
- Cultural factor
- Social identity factor

- Business Partners
- Customers
- Employees
- Contractors
- Vendors/Tenants
- Visitors



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### It's All About Your Role

- Do you exercise your professional judgment in using the individual's data?
- If so, you are a data controller !
- Beware of being labeled a data processor!



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### Article 3.2(1)

“This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.”



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### Article 3.2(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:
  - 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
  - the monitoring of their behaviour as far as their behaviour takes place within the Union.”



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### How To Comply?

- **Organizations are responsible for complying with the data subject's rights for all PII data collection, lawfulness of processing and retention**
  - ✓ Privacy by design (classifications and segregation of PII)
  - ✓ Audits and reports of PII data management through Personal Data Register
  - ✓ Security (pseudonymisation, encryption, minimization)
  - ✓ Consent and transparency (clear, concise, intelligible and easily accessible)
  - ✓ Monitoring and responding to changes in compliance mandates
  - ✓ Managing and governing Data Processors and third-party interaction relative to the processing and handling of PII.
  - ✓ Notifying supervisory authorities of data breaches within 72 hours of breach discovery



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### How Do You Obtain The Data?

- The grounds for obtaining and keeping the data are:
  - 1) Consent, or
  - 2) Legitimate interest



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### Article 6(1)

Processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.



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### Legitimate Interests Test

1. Purpose: Are you pursuing a legitimate interest?
2. Necessity: Is the processing necessary for that purpose?
3. Balancing: Do the individual's interests override the legitimate interest?



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### Accountability

- Analyze the legitimate interests
- Document the analysis and outcome
- Give notice
- Follow your decision



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### GDPR Compliance

**Identify Gaps**

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**Get Clean**


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**Stay Clean**

- Scope and Assessment

- Physical Identity and Access Governance

- Audits, Reporting and Enforcement



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### GDPR Process



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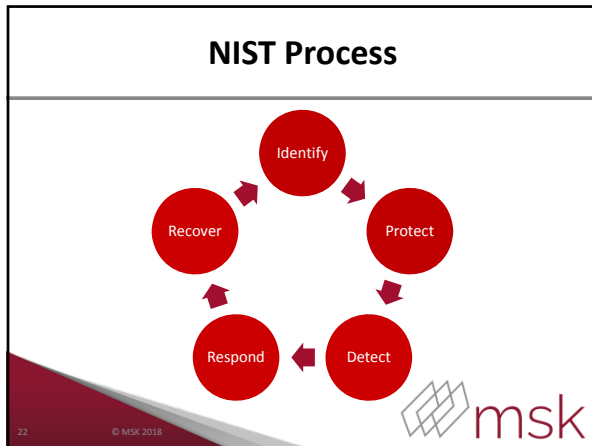
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- ### Preparation
- Formal Project Team
  - Governance Committee
  - Inventory
    - Data we own and process
    - How we gain consent
    - -How we store and manage data
  - Centralized systems with proper controls in place
    - Right to be forgotten
  - Record of Processing Activities
  - Become **and remain** compliant!

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- ### GDPR Solution Set (Think Active Policy Enforcement – Continuous Compliance)
- Provide an easy automated way to report EU personnel data storage outside of EU servers,
  - Provide a mechanism for Data Protection officer to review and reaffirm current Data state
  - Provide mechanism for End users to consent on Data Storage and renew it on regular basis
  - Provide features to End users to review their profile information across the servers and update
  - Encrypt PII information wherever possible (decrypted information should be readily available during emergencies)
  - Due to business reason, even if data is stored for employees/contractors outside EU, provide a strong mechanism so that no one except for EU personnel can view it
  - Provide a mechanism for Visitors to sign consent to store PII during the visit, need to delete visitor information once the visit is over

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## Data Protection Principles

- Lawfulness, Fairness, and Transparency
- Purpose Limitation
- Data Minimization
- Accuracy
- Integrity and Confidentiality
- Accountability



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## The GDPR Reaches Farther Than You Might Think

- Are you operating a store in Los Angeles but selling to EU residents?
- Does your website track visitors, regardless of location?
- Are your third-party providers GDPR compliant?
- Are you thinking about a potential merger or acquisition of a EU company?
- Do you have employees in the EU?
- Are you embroiled in multi-national litigation?



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## Thank You

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