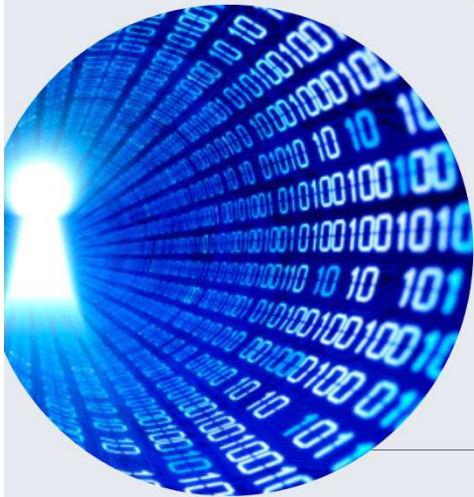




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»Privacy in new digital era: GDPR and the media – is the regulation an obstacle?«



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GDPR – should journalists know the privacy laws?

- GDPR (General Data Protection Regulation) was put into force in May 2018. It also applies to media and journalists. Freedom of expression – including a free and independent press – are important in a healthy democracy. Media organisations must therefore be able to process personal data when producing journalistic content, where there is a public interest in doing so. Data protection laws recognise this by including specific rules that help balance the right to privacy with the right to freedom of expression. One of the most important new rights GDPR offers to individuals is a right to be forgotten (right to erasure). How does this right apply to media? In this lecture we will also discuss the jurisprudence of European courts regarding this right.



What is GDPR saying about freedom of expression?

- Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data with the right to freedom of expression and information, as enshrined in Article 11 of the Charter. PREAMBLE 153



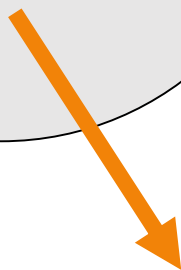
The concept of Privacy



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Circles of Privacy

1st Circle
of Privacy



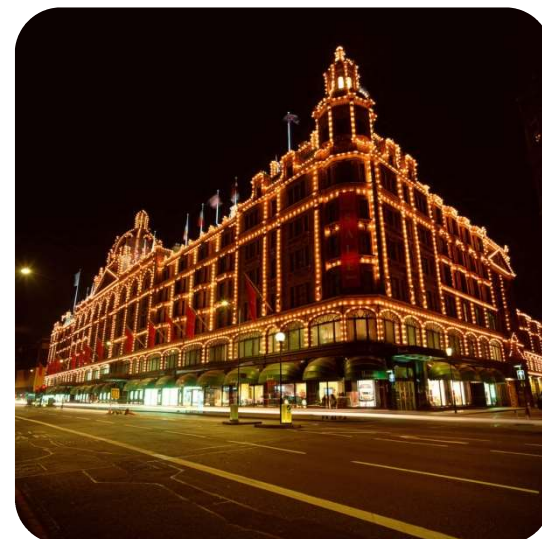
Expected Privacy



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Circles of Privacy

2nd Circle
of Privacy



**More
invasion**



Relative Public Persons



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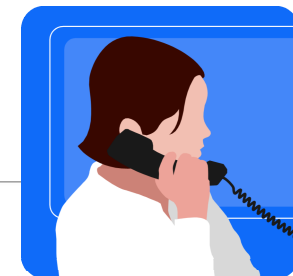
Circles of Privacy



**Information
Privacy**

Location Privacy

**Communication
Privacy**



3rd Circle
of Privacy



**Same rules apply as in
the 2nd circle**



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Balancing FOI and PDP

Proportionality



No human right is an
absolute right



All but
4



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Absolute Human Rights

➤ **All but...**

- torture,
- slavery,
- no conviction prior the offence is prescribed by the law,
- no heavier penalty if it was not prescribed by law at the time of the offence



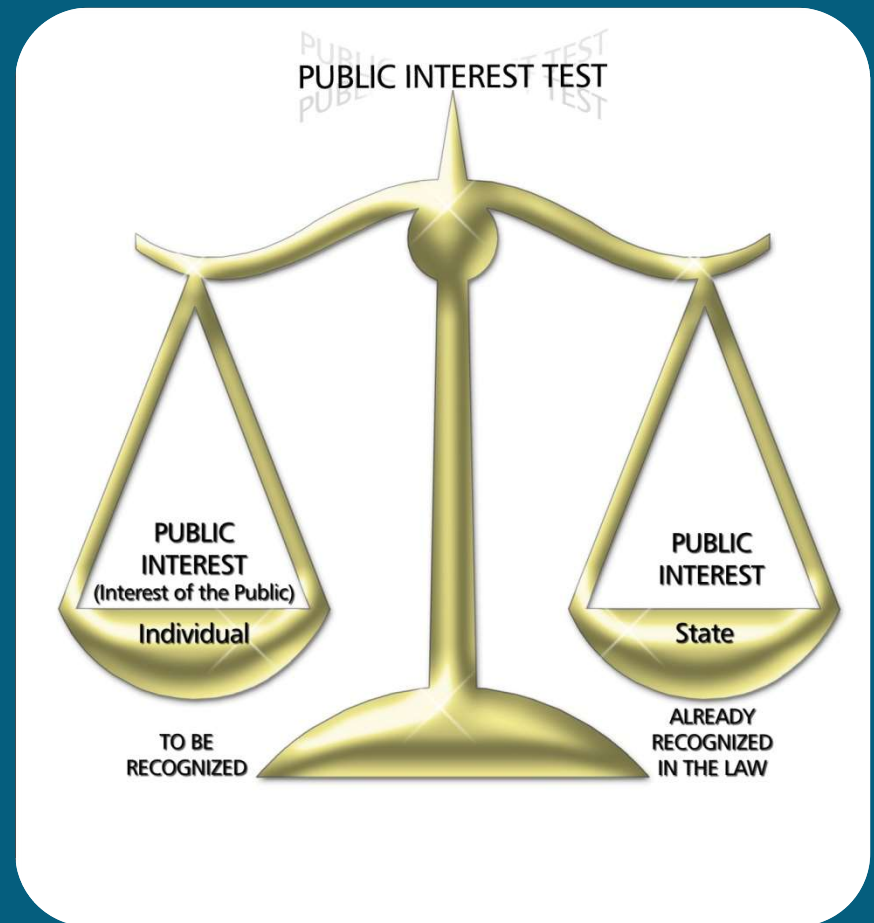
Balancing tests:

1. Harm test

2. Proportionality test

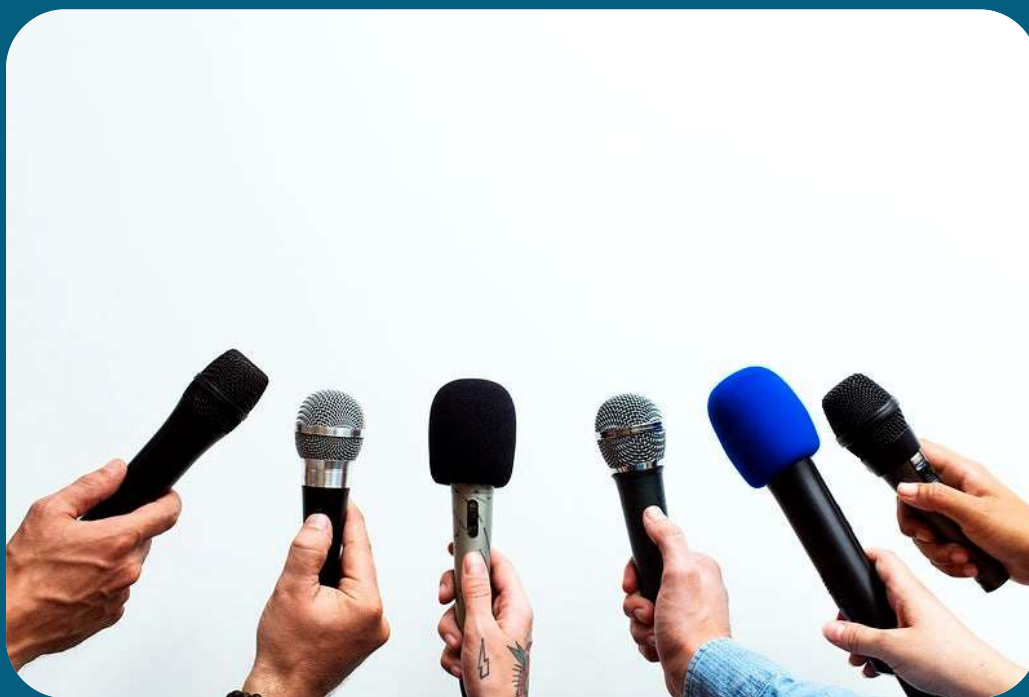
- Suitability – provided by law,
- necessity,
- proportionality (in the strict sense).

3. Public interest test



Media with high professional standards = public interest

Gossiping “yellow” press = interesting for the public



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**It is possible for the law to protect
privacy in public.**

*Do Not
Disturb*



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Do Not Disturb



„We don't say that just because a thief can easily steal a person's iPhone or iPad lying around on a table that people deserve to have them stolen. That's why we have laws against theft -- to protect against this kind of thing. The same goes for privacy. We want the law to provide protection because it is easy to violate privacy and we want to make it harder to do so.“



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GDPR

- ✓ Rights of individuals
- ✓ Obligations of data controllers and processors



Legal grounds



Processing of personal data is allowed if:

- ▶ 1. you have an individual's consent for one or more specific purposes
- ▶ processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
- ▶ processing is necessary for compliance with a legal obligation to which the controller is subject
- ▶ processing is necessary in order to protect the vital interests of the data subject or of another natural person;



Legal grounds



Processing of personal data is allowed if:

- ▶ processing is necessary for the performance of a task carried out in the public interest;
- ▶ 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.



RIGHT OF INDIVIDUALS

- INFORMATION AND ACCESS TO PERSONAL DATA
- RIGHT TO RECTIFICATION AND ERASURE – RIGHT TO BE FORGOTTEN
- RIGHT TO RESTRICTION
- DATA PORTABILITY
- RIGHT TO OBJECT
- RIGHTS CONNECTED TO AUTOMATED INDIVIDUAL DECISION-MAKING



Right to be forgotten v freedom of expression

- However, the further retention of the personal data should be lawful where it is necessary, for exercising the right of freedom of expression and information ... preamble 65



Right to be forgotten

Google v Spain

- judgment in Case C - 131/12, Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, 14.5.2014

Google



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Court of Justice of EU



Google v Spain – what is it about:

- Newspaper article from 1998 (La Vanguardia)
- Google search engine shows the bankruptcy announcement of Mr. Costeja Gonzales when putting his name in the search engine on first three spots .
- There was a real estate auction because of his financial problems, but he claimed he solved the problem and 12 years later became irrelevant.



Court of Justice of EU Google

Google v Spain – what it is about:



- activity of a search engine consisting in finding information published or placed on the internet by third parties, indexing it automatically, storing it temporarily and, finally, making it available to internet users according to a particular order of preference must be classified as 'processing of personal data
- As the data subject may, in the light of his fundamental rights, request that the information in question no longer be made available to the general public on account of its inclusion in such a list of results, those rights override, as a rule, not only the economic interest of the operator of the search engine but also the interest of the general public in having access to that information upon a search relating to the data subject's name.



Court of Justice of EU

Google



Google v Spain – what it is about:

The difference between deindexing and
Right to be forgotten?



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Case M.L. and W.W. v Germany

No: [60798/10](#) et [65599/10](#)), 28.9.2018

- The Senate largely agreed with the German Federal Court, which otherwise acknowledged that M.L. and W.W. have significant interest to delete past convictions from the media. However, it emphasized that, on the other hand, the public has the interest in being informed of the event in question and should have the opportunity to do research. The federal court also highlighted the important role that the media play in shaping democratic public opinion. Also in a way that gives the public access to older news stored in archives.



The highest penalties IN EU 2020

- **Google – €50 million (France, CNIL)**
- Although Google's fine is *technically* from last year, the company lodged an appeal against it. In September, however, judges at France's top court for administrative law dismissed Google's appeal and upheld the eye-watering penalty.
- Google was hit with this GDPR fine – the largest one to date – for multiple infractions under Articles 5, 6, 13, and 14. While each violation is slightly different, the long and short of it is that Google wasn't transparent in divulging how they harvested and used data for ad targeting.
- **How the violation(s) could have been avoided:**
Google should have provided more information to users in consent policies and should have granted them more control over how their personal data is processed.



The highest penalties IN EU 2020

- **H&M – €35 million (Hamburg DPA)**
- **the second-largest GDPR fine ever imposed.**
- H&M's GDPR violations involved the "**monitoring of several hundred employees.**" After employees took vacation or sick leave, they were required to attend a return-to-work meeting. Some of these meetings were **recorded and accessible to over 50 H&M managers.**
- Senior H&M staff gained "a broad knowledge of their employees' private lives... ranging from rather harmless details to family issues and religious beliefs." This "detailed profile" was used to help **evaluate employees' performance and make decisions about their employment.**
- **How the violation(s) could have been avoided:** Details of the decision haven't been published, but the seriousness of H&M's violation is clear.
- H&M appears to have violated **the GDPR's principle of data minimization**





I restore myself when I'm alone. A career is born
in public — talent in privacy.

(Marilyn Monroe)

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PRIVACY IS A FUNCTION OF LIBERTY

EDWARD SNOWDEN



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LAW FIRM



thank you

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