



culture + **privacy**

October, 16th, **2014**

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Privacy + International issues (**1995-2000**)



Directive 95/46/EC of the European Parliament and of the Council of 24 October **1995** on the protection of individuals with regard to the processing of personal data and on the free movement of such data

Art. 25

1. The Member States shall provide that the transfer to a third country of personal data which are undergoing processing or are intended for processing after transfer may take place only if, without prejudice to compliance with the national provisions adopted pursuant to the other provisions of this Directive, the third country in question ensures **an adequate level of protection.**

Canada

PIPEDA

United States

US / EU Safe Harbor Agreement

Privacy + International issues (**2012-2013**)

2012

Proposal for a **Regulation** of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (**2012**)

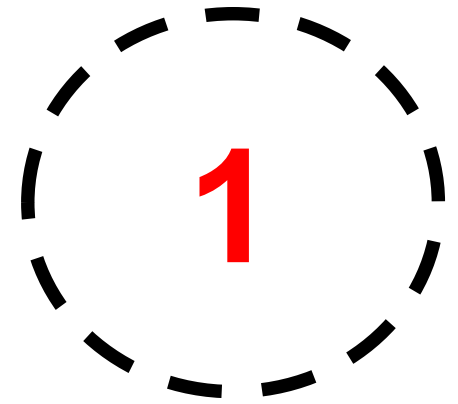
2013

Jan Philipp Albrecht, Report on the proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (COM (2012) 0011 – C7-0025/2012 – 2012/0011(COD)), November 21, **2013**

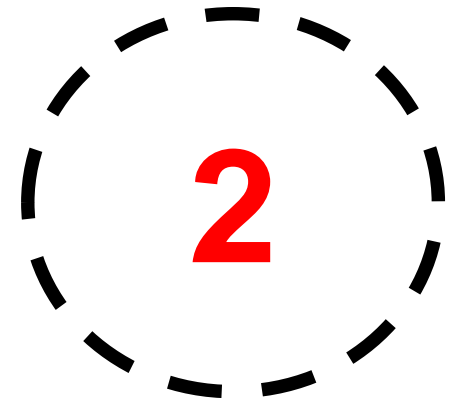
Art. 40

Any transfer of personal data which are undergoing processing or are intended for processing after transfer **to a third country** or to an international organisation may only take place if, subject to the other provisions of this Regulation, **the conditions laid down in this Chapter are complied with by the controller and processor**, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation.

So... what is all about this General Data Protection Regulation ?



1) Major **cultural differences** between the 2 continents

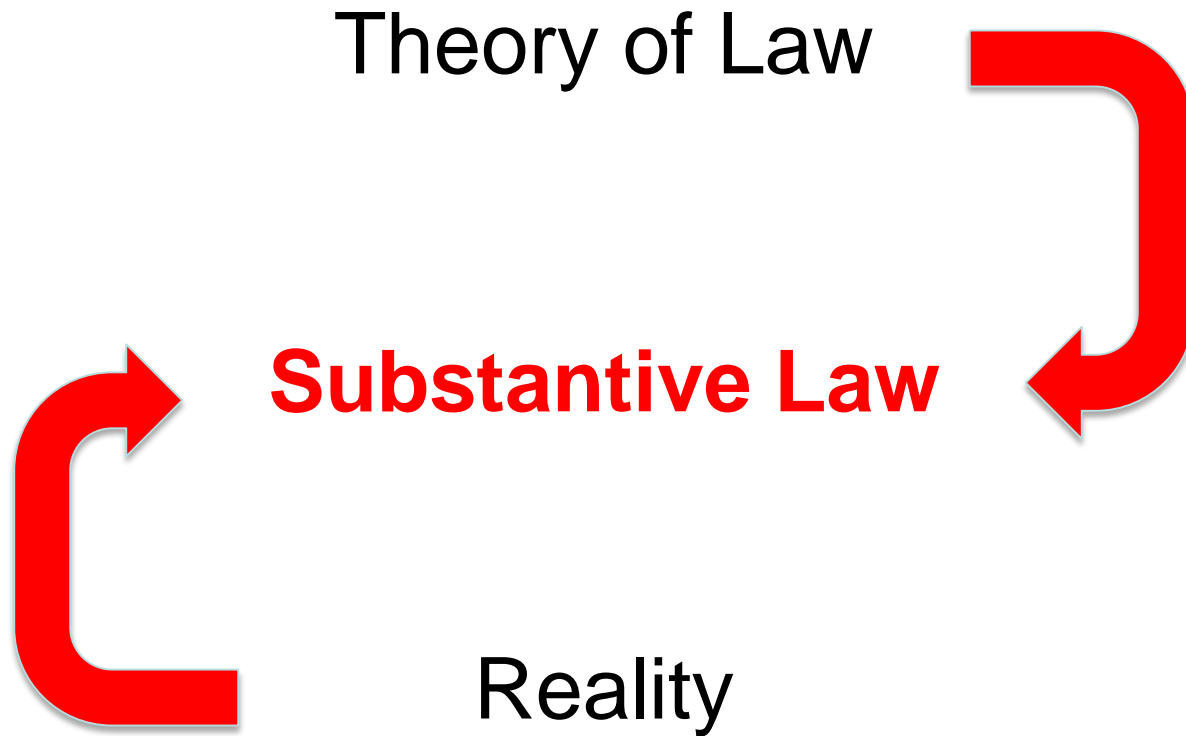


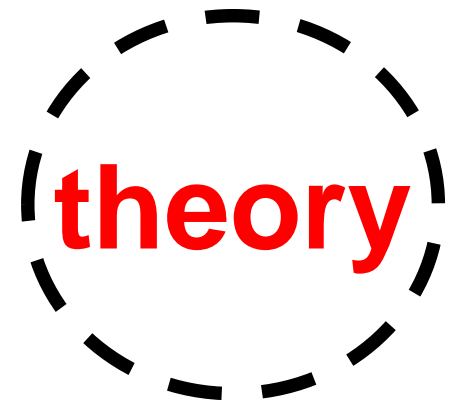
2) Some points may be negotiated

1

Some Cultural Disagreements

« **Good** » Law = ...





Ex 1: Personal Information ?

Same Personal Information **Definition**

Huge Differences of **Interpretation**

note2be

=

RATE MY
PROFESSORS



france

note2be.com ?
(06/2008: Cour d'appel)

ex : note2be in Canada ?

Is it a PI ?

ex : note2be in Canada ?

**What's about
intermediary
liability ?**

ex : note2be in Canada?

Legitimate use ?

Is it a processing of
personal data?

NO

ex : note2be in Canada ?

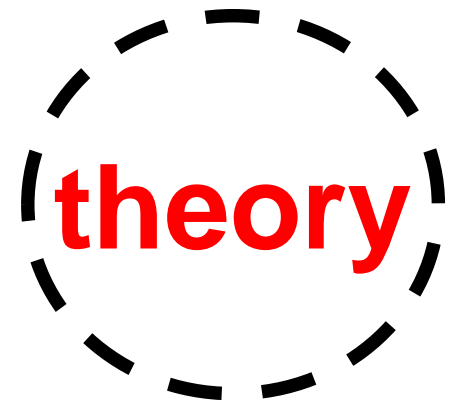
C-475

Calo

Solove

PI = **harm**

Gratton



Ex 2: Contextual Approach?

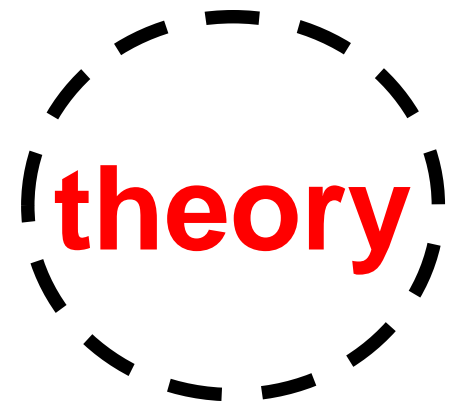
Privacy is not an **autonomous** domain

The Gazette c. Valiquette, 1996 QCCA 6064 :
« En fait, la vie privée représente une
« **constellation de valeurs concordantes** et
opposées de droits solidaires et antagonistes,
d'intérêts communs et contraires » évoluant
avec le temps et variant d'un milieu culturel à
un autre. »

Ex: Right to be forgotten (art.17 – 2012)

Ex: Right to erasure (art.17 – 2013)

May 2014 – the European Court of Justice ruled
against Google in **Costeja**



Privacy

=

Control versus **Dignity** ?



**Substantive
Law**

North America *versus* « **Old Europe** »

Ex 1: formal aspects

135 pages

625 pages

Too long!

139 recitals

shut up !!!!

Ex 2: legal instruments

Canadian Privacy Commissioner and
Facebook (2009)

Canadian Privacy Commissioner and **Google** **(2014)**

Communication as a regulation **instrument**

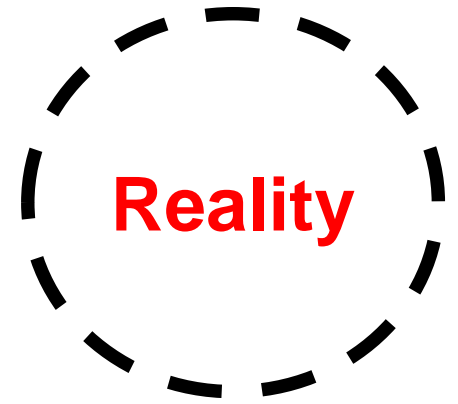
La CNIL n'ira pas à la réunion de Google sur le droit à l'oubli à Paris

ToucheS Delete vs ESC  9



Jeudi se tiendra à Paris la réunion publique du Comité consultatif de Google sur le droit à l'oubli. Conviée, la CNIL n'ira pas, préférant continuer à expertiser les lignes directrices permettant d'encadrer ce droit consacré par la Cour européenne de justice.

Le Comité consultatif de Google sur le droit à l'oubli se réunira le 25 septembre à Paris. Ordre du jour ? Des intervenants qui viennent exposer leurs points de vue avec une session de questions-réponses avec le comité. « Cette réunion, l'une d'une série de réunions organisées partout en Europe, sera un élément important du processus d'élaboration des recommandations du Comité » prévient la société américaine sur le site dédié.



Cultural Differences



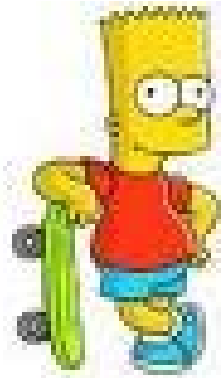
Michel Serres

Les nouvelles technologies :

révolution culturelle et cognitive

immigrants v. natives

(Mark Prensky, [Digital natives, Digital immigrants](#), 2001)



immigrants v. natives

(Mark Prensky, Digital natives, Digital immigrants, 2001)



immigrants v. natives

(Mark Prensky, [Digital natives, Digital immigrants](#), 2001)



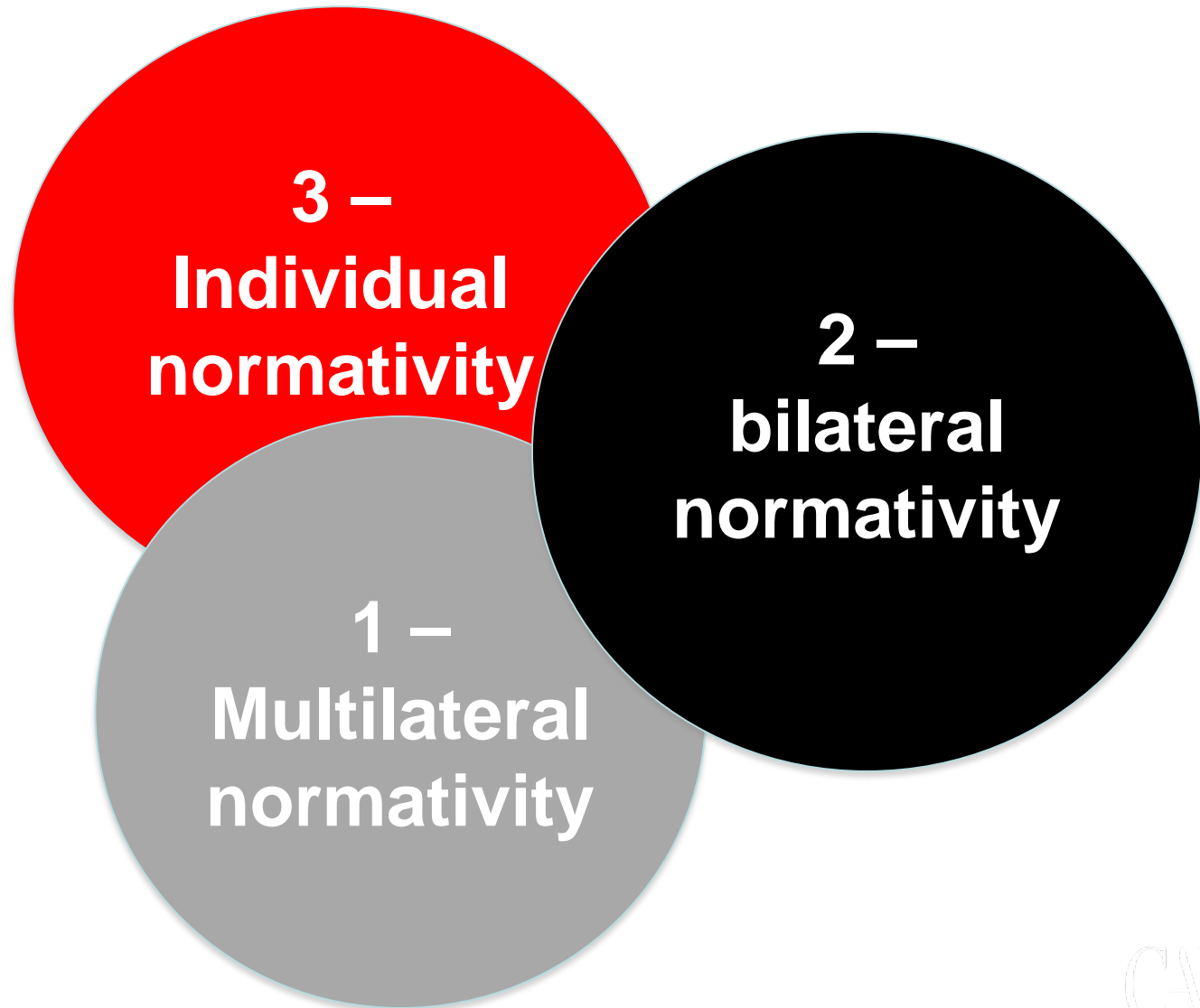
Privacy *versus* free expression

Privacy *versus* information

Ex: Privacy and Judicial Database
(as **canlii**)

2

Some **directions** to
consider



**1 –
Multilateral
normativity**

Be **careful** with laws !

Negotiation may be more efficient!

**2 –
bilateral
normativity**

Contractual pathologies



Encore des mots toujours des mots
Les mêmes mots
Rien que des mots
Des mots faciles des mots fragiles
C'était trop beau
Bien trop beau
Mais c'est fini le temps des rêves
Les souvenirs se fanent aussi
Quand on les oublie

WORD COUNT OF FACEBOOK'S PRIVACY STATEMENTS

2005	2006	2007	NOV. 2009	DEC. 2009	2010
1,004	2,313	3,067	5,394	5,443	5,830 words



Interesting European Regulation options (**2012**)

But they disappeared in the **2013** version
(Albrecht report)






A large red circle with a white border, containing the text '3 - Individual normativity' in white. The circle is positioned in the upper left quadrant of the slide.

**3 -
Individual
normativity**

Art. 28

Proposal for a **Regulation** of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (**2012**) (**2013**)

) Having regard to the proportions referred to in point 6, particulars shall be provided as follows:

ICON	ESSENTIAL INFORMATION	FULFILLED
	No personal data are collected beyond the minimum necessary for each specific purpose of the processing	
	No personal data are retained beyond the minimum necessary for each specific purpose of the processing	
	No personal data are processed for purposes other than the purposes for which they were collected	
	No personal data are disseminated to commercial third parties	
	No personal data are sold or rented out	

A good solution but...

Be careful with **norm cacophony**

A good solution but...

Be careful with **norm industry**

A good solution but...

Be careful with too much **norms**



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