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THE EU GENERAL DATA PROTECTION REGULATION: COMPLACENCY IS NO LONGER AN OPTION

Ron Moscona

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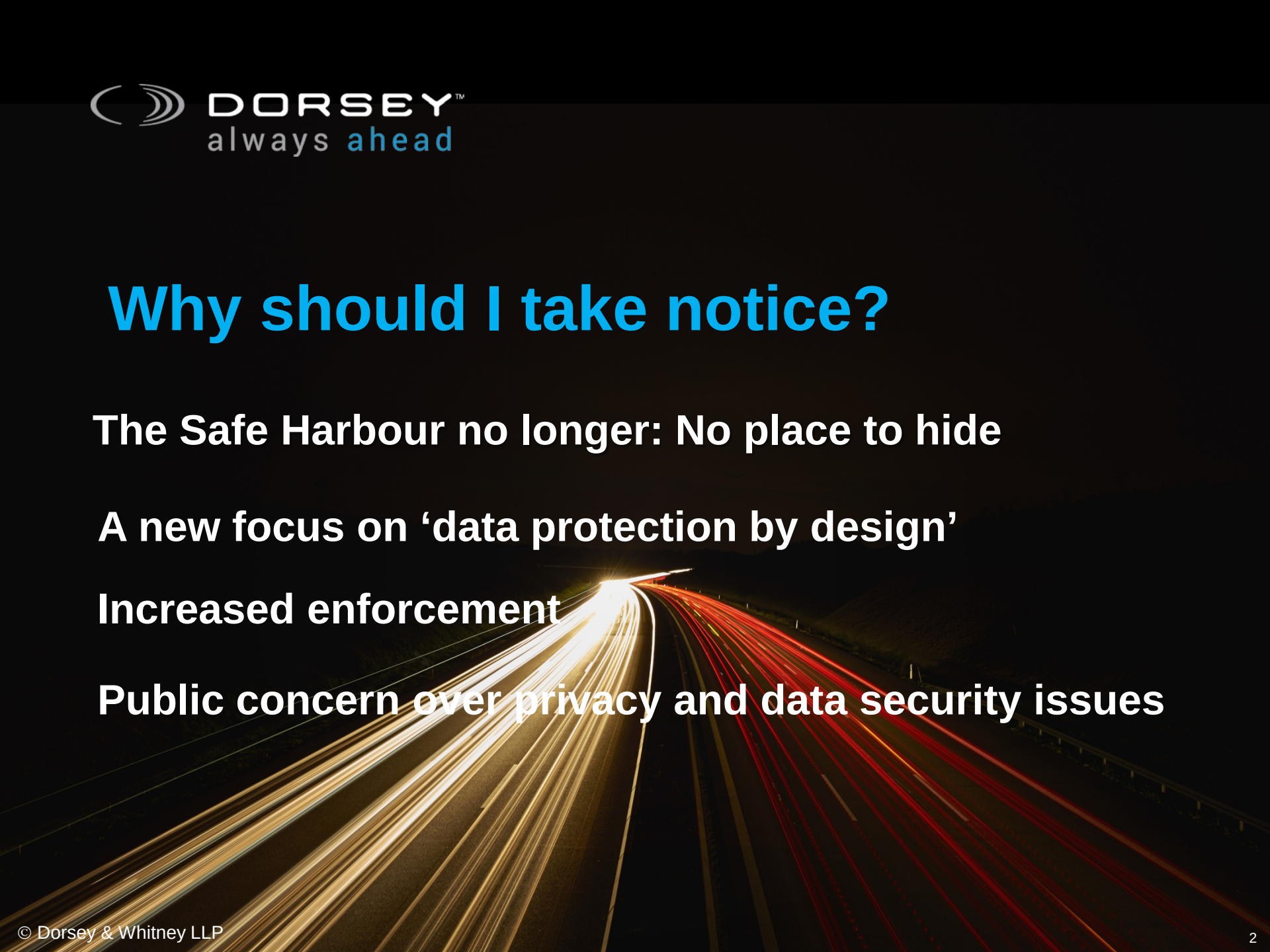
Why should I take notice?

The Safe Harbour no longer: No place to hide

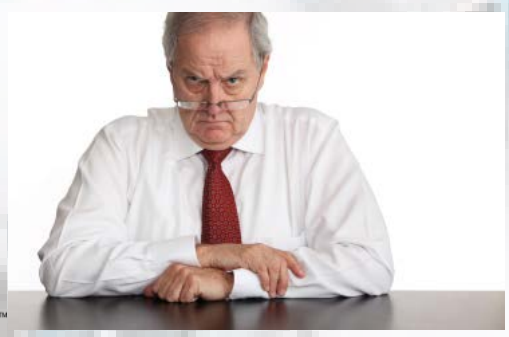
A new focus on ‘data protection by design’

Increased enforcement

Public concern over privacy and data security issues



Why is it important?



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employees

customers

account holders

debtors

candidates

competitors

users/subscribers

patients

channels

Influencers/promoters

suppliers

clients' data

Name

Email

Address

Telephone number

Post code

Age/gender

Employment/profession

Purchasing records

Browsing history

Affiliations/memberships

IP address/MAC number

Credit history

Health information

Preferences/profiling

Risk profile

Images/posts

correspondence

EU casts a wider net

- Customers
- Subscribers
- Users
- Readers
- Online services
- Profiling
- Personalising
- Targeting

Territorial reach

(I) Processing is in the context of an establishment: -

- of a controller in a Member State; or
- of a processor in a Member State

(II) Processing of personal data of data subjects in the EU by a controller/processor not established in the EU, relating to: -

- Offering of goods or services (paid or free) to EU data subjects, or
- Monitoring of EU data subjects' behavior

A new regulatory framework

- One ring to rule them all – uniform rules for all EU member states (with limited room for national variations)
- Data protection by design – a proactive approach to compliance
- Ratcheting up enforcement – strengthened tools for regulators
- A powerful central EU-level regulatory body

Regulatory enforcement powers

- Audit and investigate
- Access all personal data of controller/processor
- Access premises/computer systems of controller/processor
- Issue compliance orders
- Order temporary/permanent ban on processing
- Order rectification/erasure
- Order temporary/permanent cessation of data flows outside the EU
- Withdraw/order the withdrawal of compliance certifications
- Impose administrative penalties up to 4% of annual turnover or EUR20m

Compliance fundamentals

Is it legal to collect/keep the data? What data should I keep?

Is data subjects consent required?

Is it enough to post a privacy policy on my website?

Do I need to engage with regulatory authorities?

Who gets access to the data? Can I keep on an open system?

Can I keep the data outside of the EU? Can I transfer it to the U.S.?

How do I maintain the data? Can I keep it on the cloud?

Regulatory burdens

- ✓ Appointment of compliance officer
- ✓ Preparation of impact assessment
- ✓ Engagement with regulator
- ✓ Reporting data breaches
- ✓ Records keeping
- ✓ Certification/codes of conduct
- ✓ Data protection by design

Data collection – opt-in/opt-out

Data collection - approvals

Access control

Encryption/data security

Anonymisation/pseudonymisation

Repurposing – notification to data subjects/consent

Data cleansing protocols

Data portability

Data tracking (3rd party notifications)

Duties to data subjects

- Processing notification
- Consent (opt-in/opt-out)
- Responding to data subject requests
- Rectification/updating
- Right to be forgotten (erasure)
- Notification of rectification, erasure or restriction to 3rd parties
- Right of data portability
- Right to object - profiling, direct marketing, automatic decision making, harmful processing

Legal documentation

- Consent forms
- Data processors contracts
- Joint controller contracts
- Information to be given to data subjects
- Privacy policy
- Data processing impact assessment

Rules relating to consent

- Free, specific, informed and unambiguous
- By statement or affirmative action
- Consent may be withdrawn
- Consent folded into Ts&Cs
- Consent as part of privacy policy
- Data contributed/posted by data subject
- Obtaining consent for processing of sensitive data
- Obtaining consent from children

Exporting data outside the EU

- ✓ **Privacy Shield/certifications**
- ✓ **Model Contractual Clauses**
- ✓ **Binding Corporate Rules**
- ✓ **Data subject consent**

- ➢ **Notification requirement**

Sensitive data – a stricter regime

Data relating to:

- racial/ethnic origin
- political opinion
- religious/philosophical beliefs
- trade union membership
- genetic data
- biometric (ID) data
- health
- sex life or sexual orientation
- criminal convictions and offences

- A higher threshold for ‘legal basis’
- A higher regulatory compliance burden
- Specific rules in relation to patients’ medical records

What amounts to ‘high risk’?

- Large databases
- Profiling data
- Automatic processing
- Health data
- Employment
- Confidential data (financial, legal, private)
- Big data
- Data not contributed by subjects
- Marketing data