

# Is data ethics the new competitive advantage?

A few years ago, it was just a handful of privacy activists who were talking about ethical data processing. Now we are seeing a subtle change as some companies take up the idea.

**Laura Linkomies** reports from Copenhagen.

**D**riven by the GDPR's Privacy by Design requirement, some companies are getting interested in doing more than just the minimum to comply. By gaining consumers' trust they can gain a competitive advantage and increase the likelihood of retaining their clients.

The issues in data ethics include, but are not limited to, finding bias in algorithms, transparency in data sharing, questions of fair processing, and free and informed consent. Companies that consider data ethics are mindful of avoiding discrimination, unnecessary tracking and question the need to build profiles. These issues were discussed at the end of September in Copenhagen at a conference organised by an independent Danish think tank, DataEthics.eu.

When most adults still lack digital skills, what does the future hold for us as consumers? As connected technologies become more pervasive and embedded in everyday items, what level of privacy can we expect in 5-10 years time? Will I be able to buy a coffee machine that is not connected to the Internet and monitored, asked *Pernille Trandberg*, Co-founder of DataEthics.eu.

Whilst it is true that some companies are developing products and services using Privacy by Design, and avoiding unnecessary monitoring, more often than not companies are taking the option of gathering as much data as they can, even via an Internet connected coffee machine.

## WHAT HAVE WE LEARNED?

*Marit Hansen*, a keynote speaker and Data Protection Commissioner, Schleswig-Holstein said that probably in the future most household machines will be of the Internet of Things type. The people who want a privacy-friendly machine may need to search for a premium product. One of the key questions is the accumulation of non-personal data. Can it be used for

discrimination when combined with several other sets of non-personal data? Who is in control, for example in the case of a smart city? "I want to see better solutions on data protection by design and default," Hansen said.

Some years ago Hansen initiated the legal case on Facebook fan pages, which dealt with the questions of joint controllership; primarily Facebook was seen as the controller, but if a fan page administrator takes part in the determination of purposes and means of the processing, they can be a joint controller. She said that the case which went all the way to the European Court of Justice could have had ramifications for the Cambridge Analytica case. "Had we had some answers then, we would not have had the Cambridge Analytica case." The DPA lost the case. She now questioned whether the GDPR debate is running in the wrong direction – some companies think they can do more with data. So it has maybe not been such a game changer after all.

There are other forms of punishment under consumer protection laws. We need a level playing field so that fines are available in every country, she said.

Another keynote speaker, *Dan Shefet* of Cabinet Shefet, based in Paris, said that the overwhelming problem of data ethics is that human rights law does not apply to social media companies and the Internet, as they only apply to governments. Court cases from the US indicate that Twitter, as a publicly traded company, is subject to the US First Amendment free speech provision, but YouTube and Google as private companies are not.

He said that there are many cases in the US about claims that the Internet has destroyed a person's life. That is why we have the Right to be Forgotten.

Shefet has written a report on radicalised content for UNESCO. He said that under certain conditions intermediaries can be liable for content. But what

is illicit content? From a legal point of view, this is very difficult to define, he said. "If we want practical content regulation, then we need to help companies to make the judgement. Europe is now considering an Internet ombudsman for this role."

## ETHICS DO NOT BLOCK PROFITS

Some companies showcased their experience of ethical data processing at the conference. *Istvan Lam* of Tresorit, which is based in Switzerland and Hungary and specialises in end-to-end data encryption and data ethics, said that all of their revenue comes from data and that the company has grown 4000% since the beginning of 2015.

*Erlin Gulbenkoblou* of Silo.ai, based in Finland, spoke about interpreting AI models. In her company, the ethos is always to involve a human at some point in automated decision making.

"We want to free the human mind from boring, repetitive work – but GDPR Art 13 requires companies to provide information on the logic behind decisions."

*Laura Sophie Dornheim* of Adblock plus, open-source content-filtering and ad blocking extension developed by Eyeo GmbH, a German software development company, said: "We don't gather any identifiers. But we do not block all advertising, as we also need to make money. There are alternative solutions – for now we are promoting user friendly solutions, to ensure there is no annoyance to the consumer – they can activate tracking blockers with one click and the service is free of charge."

Lam thought that the system on LinkedIn works well: advertisers have to pay per LinkedIn contact and this ensures that advertisers think carefully how many people they will want to contact – leading to relevant ads.

*Kasper Holst Hansen* of Copenhagen-based EduLab introduced his company which helps children to learn

maths by using algorithms to show them where they are in the learning process. He said that teachers also benefit from the system as it helps them save time in correcting assignments.

“Today ethical data processing may be a competitive advantage. Tomorrow it will be a vital issue for survival,” he said. EduLab has established ethical guidelines which are sent to customers. The guidelines are being elaborated all the time to respond to technological developments.

He said that they have understood that data protection law is just the start and the lowest level required. Data ethical guidelines now represent a clear vision for everybody in EduLab. Holst said that data ethics is a behaviour, an attitude in their daily work.

*Cécile Wendling* of the France-based AXA insurance company has a funky job title of Group Head of Foresight. Her task is to identify issues that will affect business in the future. From the start, she has highlighted trust and ethics. The company now has a Data Protection and Ethics Panel. In insurance, the ethics of algorithms plays a major part. However, she said that even with their best intentions, it is impossible to avoid bias completely.

AXA has its own in-house Research and Development team and it also finances academic research. “We cooperate with Microsoft and others who are interested in ethical use of AI. This can include tools such as developing ethical checklists,” she said.

She said that regulators and supervisors are currently discussing the ethics of algorithms. For example, France’s DPA, the CNIL, works with the financial regulators in this field. The CNIL has issued a report on the principle of fairness. There is a need for international governance with guiding principles on the use of algorithms, she said.

Also the ACPR, France’s financial

regulator, has issued an AI questionnaire to find out the possible safeguards to prevent misuse of AI. How can we make sure that the use of data is fair and transparent?

*Amber Kortzorg*, of Amsterdam-based Playwall challenged the conference by explaining her company’s rationale – paying with your data. “Everyone says data is the new oil so we thought why not let people use their data as currency,” she said. The concept allows for individuals to pay for online access to media with their opinions and data, instead of paying for individual articles.

“Revenues are declining in printed and online media. People do not realise they are often paying with their data. We are open about that. We treat the data in an anonymous way. Individuals are asked to answer five simple questions before getting access to the article they wish to read. The media companies create the questions. They can then access our dashboard to download the data.”

She said that no single identifier links back to the individual, so the process is completely anonymous, and no sensitive data is gathered. The data collected is owned by the media company that can sell it to third parties, but the data is not identifiable. However, the media companies can optimise their content and sell more ads, she said.

Kortzorg said that of the 40,000 people they approached, 0.3 per cent wanted to pay with money. People who are most likely to pay with their data are in the age group 25-34 years. A staggering 65% of them said that the best way for them to pay is to answer the questions. She said that in the Netherlands, most paying customers did not stop subscribing and paying for the product.

“Being ethical does not mean that you cannot make a profit,” she said. “We should accept the basic idea of

monetising data, the question is what you do with the data you already have.”

**WHAT NOW?**

In 2015, the EDPS set up an independent Ethics Advisory Group on the ethical dimensions of data protection. This autumn, the EDPS has published a summary of the responses to its public consultation on data ethics (see below), and ethics is the main theme of the DPAs’ International Conference in Brussels this month.

EDPS, Giovanni Buttarelli has said that the GDPR is an essential key to enforce data protection rights but cannot solve every question especially related to Artificial Intelligence, Big Data and Internet of Things – data ethics therefore remains a priority for his mandate.

In the UK, the Open Data Institute continues its work on data ethics. It says that codes of data ethics are being developed across sectors, and ethics training is becoming more common. It has launched the Data Ethics Canvas, a series of questions which are designed to help identify potential ethical issues associated with a data project or activity. In addition, the UK government is investing £9 million to establish a Centre for Data Ethics and Innovation to advise on the measures needed to enable and ensure safe, ethical and innovative uses of data-driven technologies.

The conference organiser, Data Ethics EU, has identified tools for businesses to include data ethics in their work, and issued a helpful booklet on the basics of data ethics<sup>1</sup>.

**REFERENCES**

- 1 [dataethics.eu/en/](http://dataethics.eu/en/)
- 2 [edps.europa.eu/sites/edp/files/publication/18-09-25\\_edps\\_publicconsultationdigitaleticssummary\\_en.pdf](http://edps.europa.eu/sites/edp/files/publication/18-09-25_edps_publicconsultationdigitaleticssummary_en.pdf)

**EDPS CONSULTATION ON DATA ETHICS**

Results on the consultation on data ethics, organised by the European Data Protection Supervisor (EDPS), were published in September 2018.<sup>2</sup>

The survey reveals that more than 80% of the respondents thought that ethics relating to new technologies is, or will soon be, on the agenda of their organisation. Many of the 76 respondents considered it “important”, “extremely relevant”, or even

“mandatory” and “a priority”. When explaining their motivations, respondents referred to the need for technology to serve humankind, the limitations of the legal system, as well as the scale of the challenges faced.

63 out of the 76 participants answered that they are dealing with, or planning to deal with, ethical challenges illustrating the variety of organisations facing ethical

challenges, as well as the growing interest in, or demand for, an ethics-based approach to digitalisation, the EDPS says.

The EDPS says that the responses will guide further EDPS work on digital ethics, and will be used to stimulate discussion at the 2018 International Conference of Data Protection and Privacy Commissioners in Brussels in October.

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