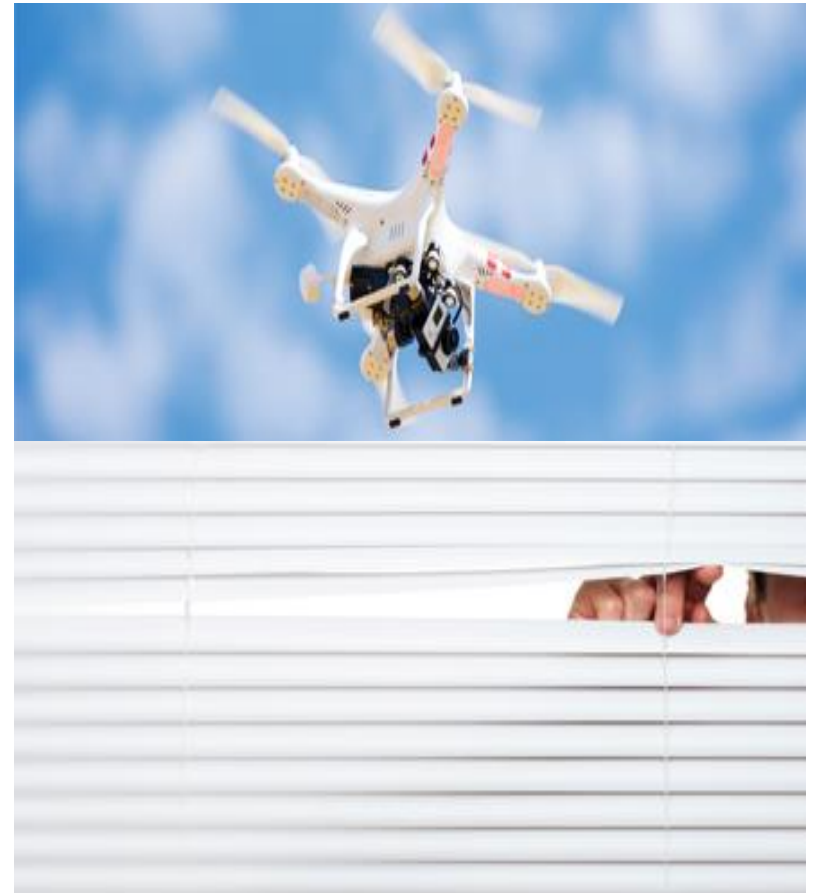


Drones, privacy intrusion and safeguarding data.

Sally Annereau
Senior data protection advisor

5 October 2016

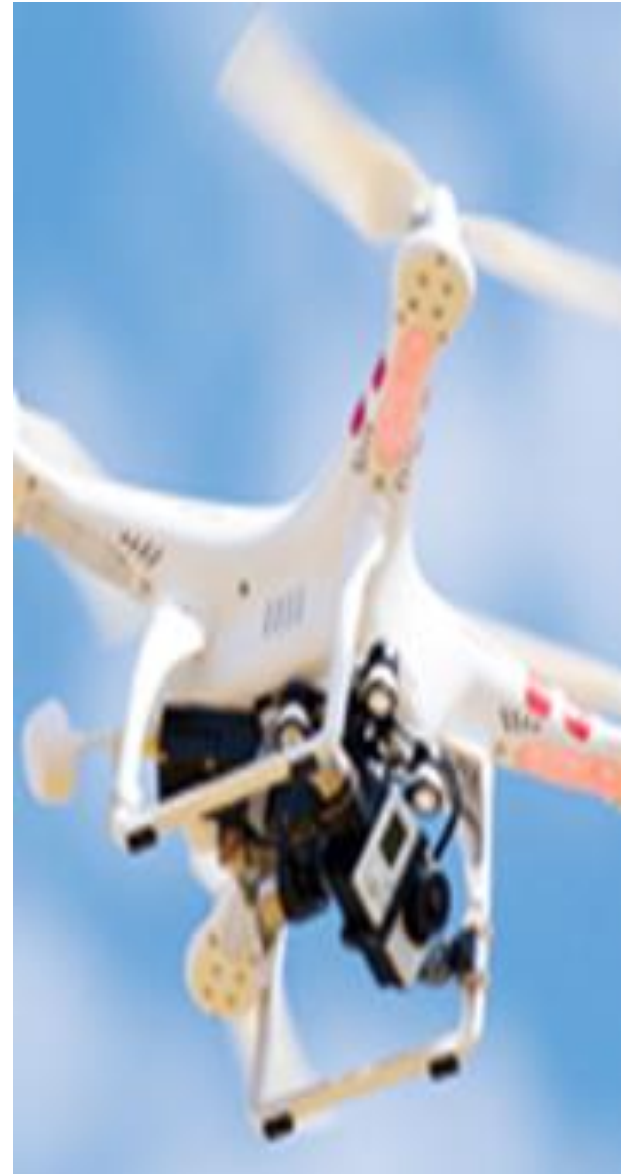


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- > Drone market
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- > Current EU legal framework
 - privacy
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- > Assessing data protection and privacy risks
- > Enforcement and remedies
- > The General Data Protection Regulation (GDPR)
 - what the new EC law means for drone use?

The sky's the limit!

- > Rapidly expanding global market
- > Wide scope of applications
- > Proven benefits and developing opportunities
- > Future technology – micro drones imitating nature



Privacy challenges

- > Video and still images
 - > Wider drone payload applications
 - including high power zooms, facial recognition, motion detection, ANPR, Wi-Fi sensors, wider IOT connectivity
 - > Capable of accessing all areas
 - > Significant risks for enhanced surveillance
 - > Public attitudes
 - 62% more concerned about drone use by private than commercial owners
 - 79% of British citizens concerned about drone privacy
- Comres research for the Royal Aeronautical Society June 2016



Current EU privacy and dp framework

- > Council of Europe Convention on Human Rights
 - Article 8
- > Charter of Fundamental Rights of Europe
 - Articles 7 (Privacy) and 8 (data protection)
- > Directive 95/46/EC (Data Protection)
- > Directive 2002/58/EC
(Privacy and Electronic Communications)
- > National implementing laws
- > Supplemental national rules and guidance (e.g. CCTV)



Right to private life



- > Council of Europe Convention on Human Rights
 - Article 8

"Everyone has the right to respect for his family, his home and his correspondence"

- > Von Hannover v Germany (no2) ECHR

a person's image constitutes one of the chief attributes of his or her personality, as it reveals the person's unique characteristics and distinguishes the person from his or her peers. The right to the protection of one's image is thus one of the essential components of personal development.

Reasonable expectation of privacy?

Consider:

- > Location?
- > Subject(s) - adult or child?
- > Potential exceptions
 - consent provided?
 - filming from afar?
 - sporting event (made clear from the programme)
 - Law enforcement or public interest
- > Test of proportionality is key



Data Protection

- > Personal data
 - information allowing for people to be identified directly or indirectly
 - Includes image, location, sound, behaviour

- > Applies to private entities and public authorities (excluding law enforcement and certain journalistic activity)

- > Purely family, domestic household activities exempt, EXCEPT if:
 - published on internet or shared on social media (CJEU – Lindquist 2003)
 - captures public space or others gardens or property (CJEU – Rynes 2014)

Key requirements - 1. Lawful processing

> Legitimate basis

- consent?
- contract necessity (where subject is a party or at their request)
- necessary for legal or public interest reasons?
- necessary to protect the vital interests of subject?
- necessary for purposes of legitimate interests?

Key requirements - 2. Proportionate processing

> Impact assessments

- users
- manufacturers

> Understanding the capabilities (and limitations) of the drone

- recording features
- field of vision
- geo- ringfencing
- data storage capabilities

> Considering the environment and flight path

Key requirements - 3. Transparent processing

> Clear and transparent communication

- who is the controller of the personal data?
- what the purpose of the processing?
- what data being processed?
- who is it shared with?
- how individuals can exercise rights (e.g. access, correction, erasure)

Communication options

- > Advance flight notices
- > Onsite notices
- > Drone identification
- > Operator visibility
- > Online information resources



Key requirements - 4. Security

- > Appropriate technical and organisational measures against
 - accidental or unlawful destruction
 - accidental loss, alteration, unauthorised disclosure or access
- > Includes
 - remote device cyber-attacks
 - transmission of captured images/content
 - storage of data (both on the drone and elsewhere)
- > Applies both to:
 - the design stage; and
 - ensuring the proposed drone is 'fit for purpose'



E.Gs Current potential DPA financial sanctions

Country	Financial penalties
UK	Up to £500,000
Spain	Up to Eur 600.000
Ireland	Up to Eur 250,000 per offence
Denmark	Minimum fine generally DKK 10,000 -25,000 Increases of DKK 100 for each further act of violation
France	Up to Euro 300,000 for an individual Up to Euro 1,500,000 for corporate entities 5 years imprisonment (where criminal sanctions incurred)
Switzerland	Up to CHF 10,000
Netherlands	Up to Eur 810,000 or 10%of annual turnover
Germany	Generally between EUR 50,000 per breach to EUR 300,000 per breach (NB Deutsche Bahn – fine of Eur 1,123, 503.50)
Belgium	Generally between 600 – 600,000

GDPR: New EU DP law (from 25 May 2018)

Scope

- Broader definition, personal data
- Extended to those who are not in the EU if processing relates to EU data subjects
- Home authority "one-stop shop"

Breach Notification

- To DPA and potentially subjects
- Within 72 hours of awareness

New Rights

- Right to be forgotten
- Data Portability

Enhanced Rights

- Processing
- Direct marketing
- Automated decisions/ profiling
- Subject access

Compliance

- Documentation
- Policies
- Data Protection Officer
- Prior Authorisation

Tools

- PIA
- Privacy by Design
- Data Protection by Default
- Certification schemes

➤ Exemption for purely family, domestic household activities remains

Tougher enforcement and penalties under the GDPR

Article 83 - examples of infringements and corresponding fines:

Infringement of below requirements which can attract a fine of up to <u>2% of total global annual turnover or €10m</u> (whichever is the higher)	Infringement of below requirements which can attract a fine of up to <u>4% of total global annual turnover or €20m</u> (whichever is the higher)
Implementing appropriate technical and organisational measures to ensure data protection is enshrined by design and default (i.e. implementing pseudonymisation and collecting data necessary for each specified purposes only).	Compliance with the basic principles for processing (including the conditions for consent)
Only engaging processors providing sufficient guarantees to implement appropriate technical and organisational measures. Processors not enlisting another processor without prior specific or general written consent.	Compliance with data subject rights
Maintaining records of data processing activity by a controller that is under its responsibility or by a processor where carried out for a data controller.	Obligations when transferring personal data to a recipient in a third country or an international organisation
Carrying out data protection impact assessment prior to carrying out processing which is likely to result in high risk for the rights and freedoms of individuals.	Legitimate transfers of personal data outside of the EU made pursuant to exemptions, adequacy decisions or derogations (only).
Notification of data breaches	Non-compliance with an order or limitation on data flows imposed by a supervisory authority

Enforcement powers under the GDPR

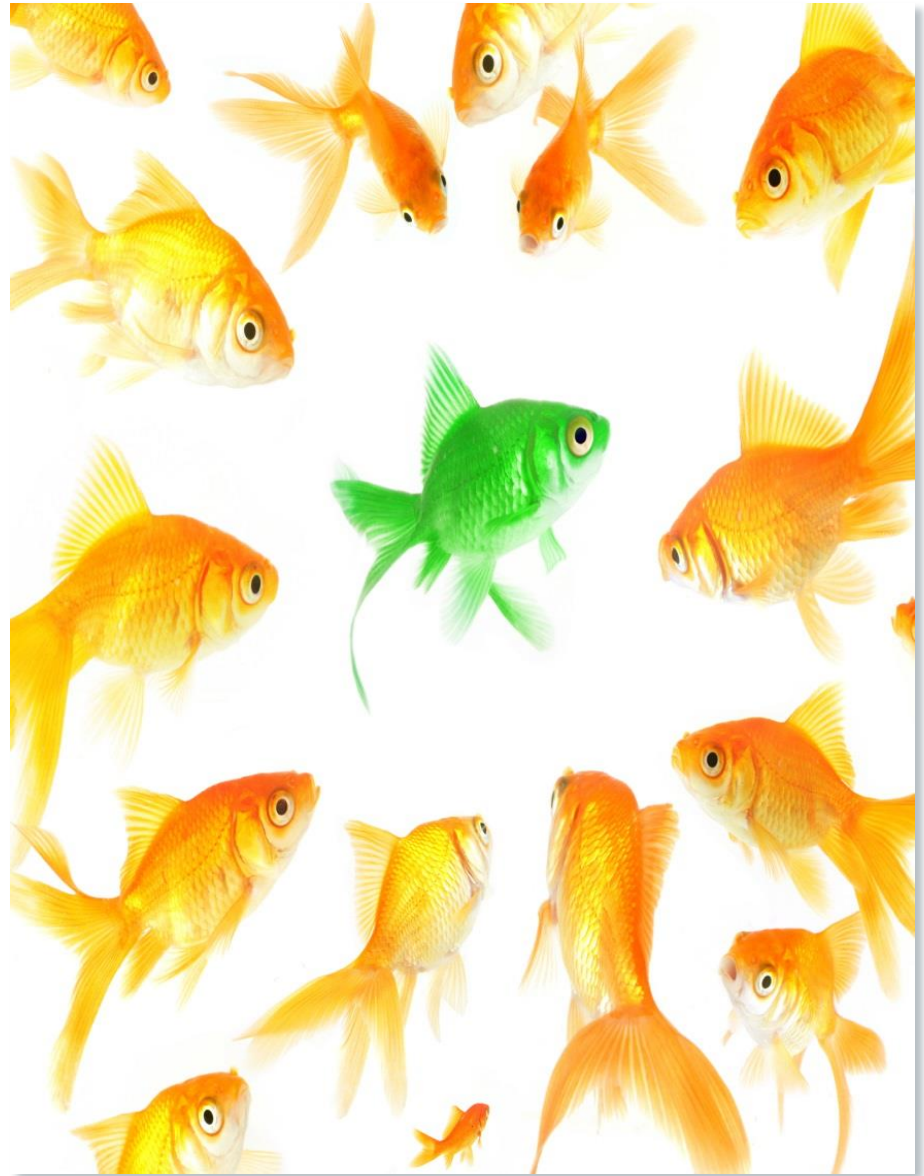
- > Article 58 - Supervisory Authorities' powers include (investigative and corrective):
 - to order the controller and the processor to provide any information it requires
 - obtain access to all personal data and all information necessary to perform its tasks;
 - obtain access to any premises including data processing equipment;
 - issue warnings/reprimands for processing is likely to breach the GDPR;
 - order the controller or processor to bring processing operations into compliance;
 - order the controller to communicate a personal data breach to the data subject;
 - impose a temporary or definitive limitation or ban on processing;
 - impose administrative fines;
 - Suspend data flows to a recipient in a third country or to an international organisation.

Other GDPR remedies and penalties

- > Article 77 – right to lodge a complaint with a DPA
- > Article 79 - right to bring civil claims
- > Article 80 - potential to join class action suits through a not for profit representative.
- > Article 82 - right to compensation



Any questions?



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