SCALING SELF REGULATION

MARTIN ABRAMS

Size Doesn't Matter

- Three engineers with a server and great sources of observational data may create significant fair processing risk for individuals and society
- Accountability, implicit or explicit in every privacy law covers not just large companies, but those smaller entrepreneurial organisation as well
- Co-regulation – self regulation with enforcement – is a means of making data protection scalable where data ecosystems are abundant and diverse

Co-regulation Rests on Accountability Concepts

1. Organisations must have policies that link to an external recognised criteria
2. Mechanisms for putting the policies into place must exist
3. There must be internal monitoring
4. There must be ways for individuals to participate
5. There must methods of external oversight and remediation
   - Where there are common processes and risks, a common accountability system may exist over numerous companies
   - This may become the basis for a code-of-conduct

Don't Focus on the Phrase Code-of-Conduct

- It is the functionality that matters
- In 2015, IAF research on making ethical assessments enforceable discovered that codes-of-conduct are called different things in different laws
- And they may be enforced based on different legal theories
- However, the means to use an agreement to adhere to a recognised process may be enforceable almost everywhere

What Is Important Is the Common Criteria

- A code may be developed around general compliance with a law by an industry
- A code may be developed to comply with a portion of a law, such as the legitimate interest provisions in the EU GDPR
- Or they may apply to a process, such as data driven regulation, aka "thinking with data"

An Example

- In 1997, companies conducting individual lookup services created a code-of-conduct called the Individual Referencing Services Group Principles ("IRSG")
  - The rules were vetted by the FTC and presented at a special open session
  - Companies publically stated they would live by the IRSG
  - Third party assurance reviews were conducted
    - Results were posted
    - Results were communicated to the FTC
  - Both large and small organisations were part of the IRSG

Potential Example

- In 2016, IAF is working with 20 companies in Canada to develop a Canadian-specific framework for big data analysis
- The framework, along with governance rules, could be turned into a code-of-conduct
  - Each company (or a group of smaller companies) could customise the assessment process in the framework to fit the context of the business
- An accountability agent could then review the assessment process to determine if:
  - The implementation is reflective of the framework
  - The assessment has been implemented in a competent fashion
  - The assessment is being used with integrity

Necessary Policy Infrastructure

There exists:
- A public demand for governance
- The authority to oversee codes-of-conduct, no matter what they are called
- The development of oversight models that are feasible

Where and How to Reach Me

Marty Abrams
mabrams@informationaccountability.org
+1.972.781.6667