

9 November 2023

Measuring The Effects Of Regulation In The Data Protection Space

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How did we get to data regulation in the first place

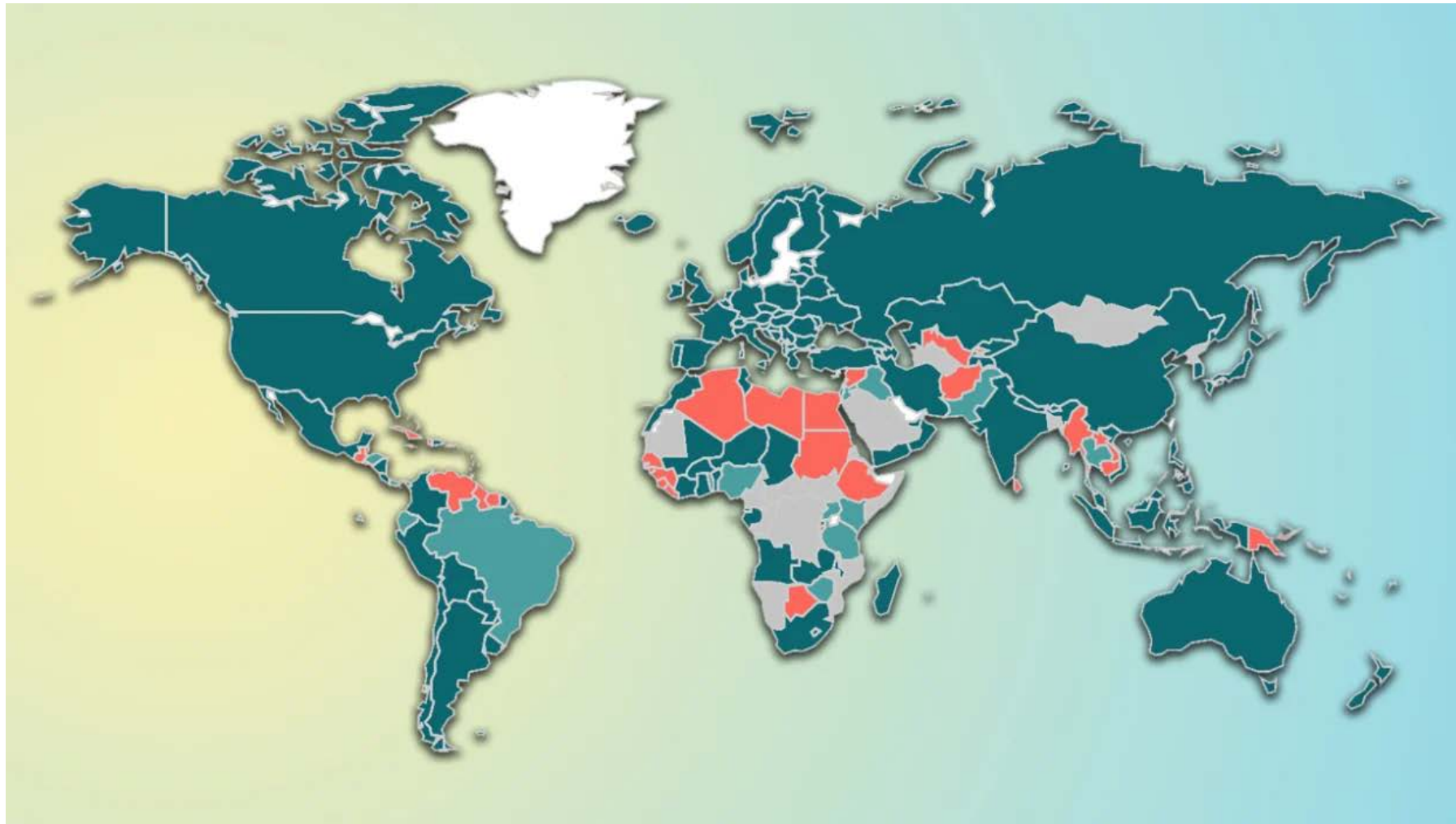
- Most historical and cultural issues in Europe (Lat Am and Asia)
- Growth of commerce and the digital economy elsewhere (US, China)

Is a regulated environment helpful to business?

- are there good and bad elements?

How easy is it to mirror good data protection concepts in practice?

Data Protection Regulation – The Reality

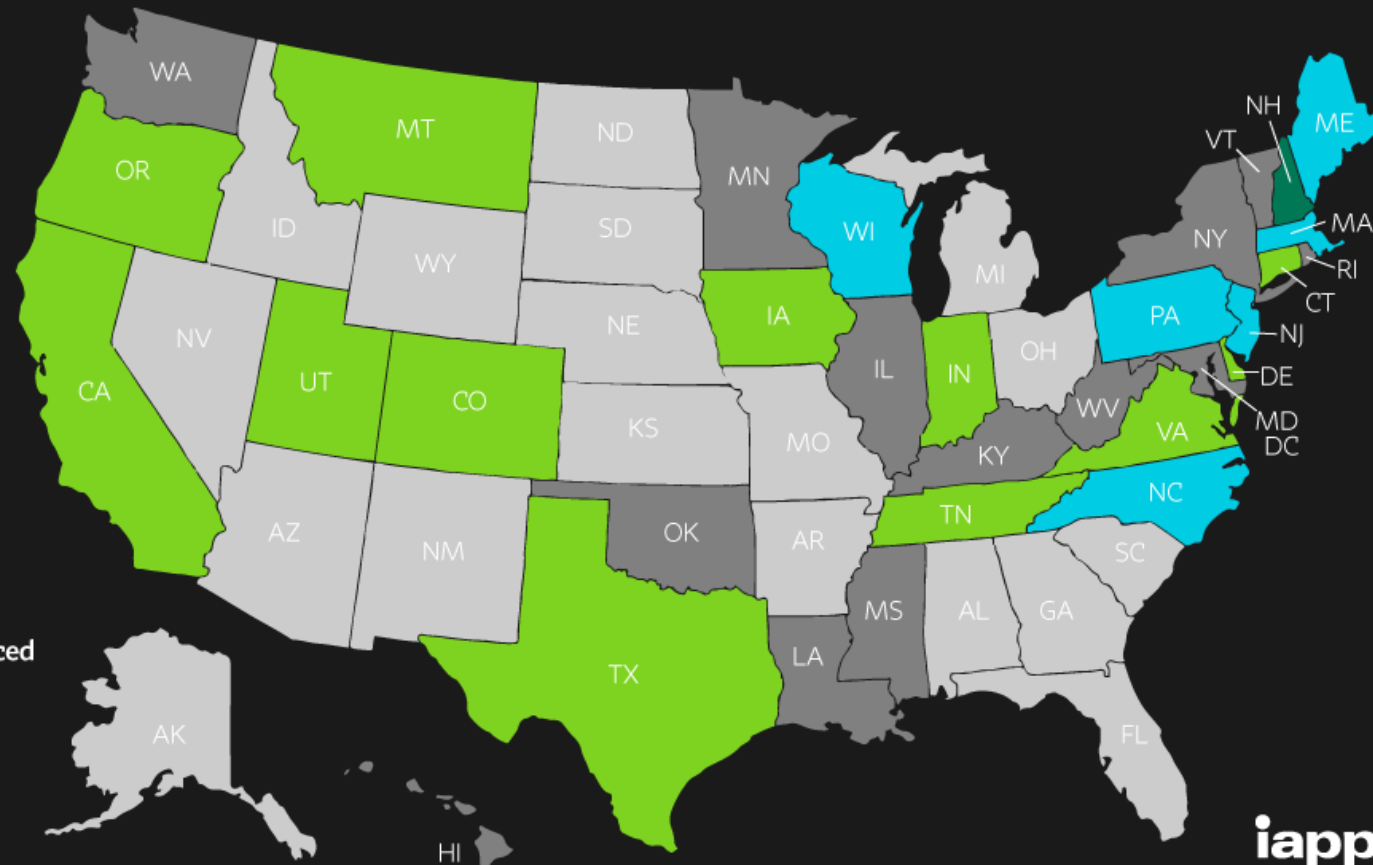


Data Protection Regulation – The Reality

US State Privacy Legislation Tracker 2023

STATUTE/BILL IN LEGISLATIVE PROCESS

- Introduced
- In committee
- In cross chamber
- In cross committee
- Passed
- Signed
- Inactive bills
- No comprehensive bills introduced



Last updated: 10/20/2023

iapp

Fundamental Rights v. Consumer rights?

Omnibus

- (EU/ UK (GDPR), China, Brazil, US States)

Industry sectoral approach

- (US Federal (HIPAA, GLBA))

Is one approach better than the other, If so, for who the organisation the individual?

What is best legislator approach?

- objective – i.e. contextual but places burden on organisation to assess
- Prescriptive with greater clarity but less flexibility?

Harmonization: harmony or HARM?

Digital society and the “free flow” of personal data has changed regulatory outlooks

Is there a need to standardise regulation?

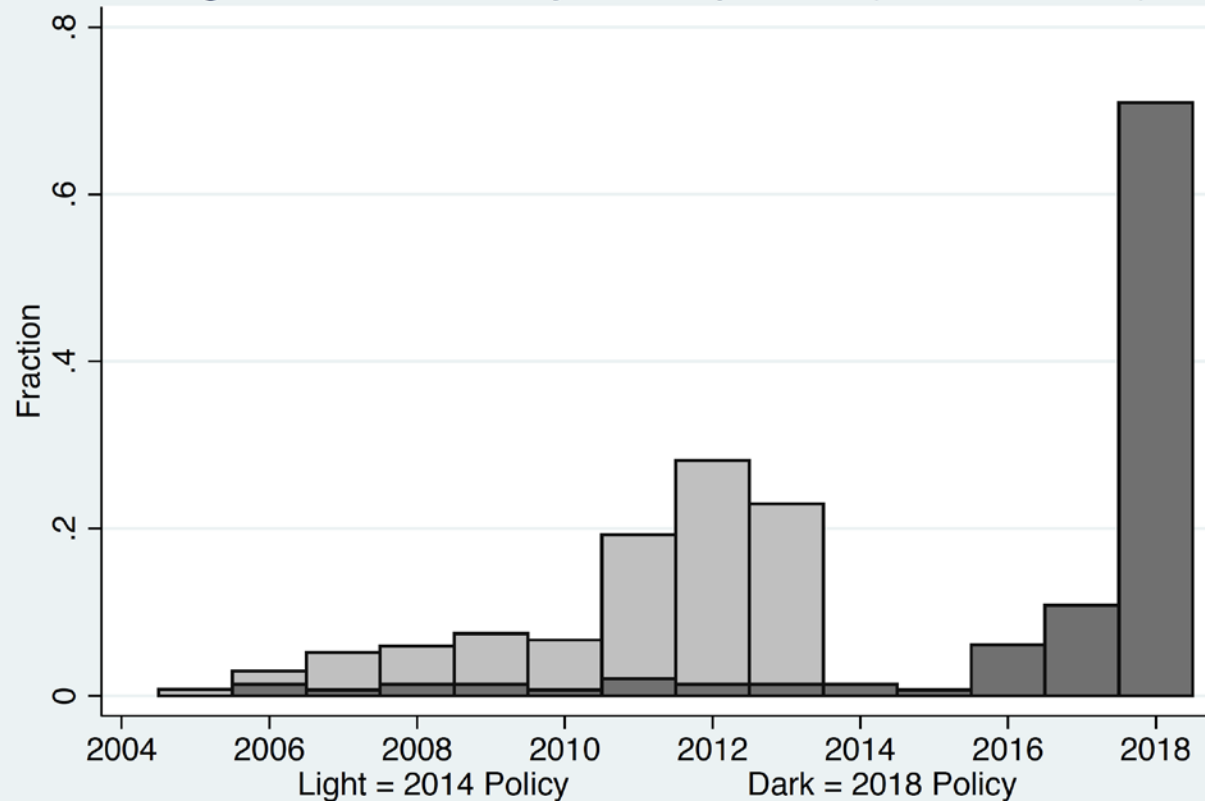
Has the international approach to date worked?

- GDPR – the rise of extra territoriality
- Greater International co-operation
 - See what is being considered for AI

Has local/international regulation caused more harm than harmony?

Some Facts About Harmonization: Regulatory Spillovers and GDPR

Figure 1. Year Policy Last Updated (N=194 Firms)



”Filling the Void: How E.U. Privacy Law Spills Over to the U. S.”
(Davis & Marotta-Wurgler 2023)

- Increased harmonization between E.U. and U.S.
 - U.S. firms heavily revised their privacy policies after GDPR
 - 75% of sample firms use the same policy as in the E.U.
 - Most claim compliance with GDPR
 - Compliance varies by market
- Challenges of Harmonization in the E.U.
 - Not all DPAs publish decisions, report differently
 - Some initial findings from Spain and Austria:
 - Privacy complaints, enforcement, disposition, vary by region
 - Same cases result in different outcomes
 - Set of cases treated as GDPR cases also differ between countries
 - (Bechtold, Marotta-Wurgler, Stein, 2023)

Enforcement of Data Protection Legislation

Now that we have data protection regulation in most jurisdictions, with increasing powers of sanction how do we effectively enforce?

- Is it carrot and stick – EU fines under GDPR total over \$5Billion

What trends are emerging between fines and corrective measure sanctions?

- A fine could be a bad quarter but a requirement to change or stop processing could be far worse for the business

What do organizations fear?

- Lack of consistency in application of sanction
- Not knowing what the level of the sanction may be

How should businesses think about enforcement and the impact on business?

Is society better-off for data protection regulation?

- Awareness of data protection issues have moved into the mainstream
- Individuals aware of DSAR and other rights
- Organizations (wherever they are located) likely to be aware of issues and risks

Has the circle been closed?

- GDPR is not perfect
- UK aiming to “unburden” restrictions of GDPR
- US still not close to Federal Privacy Law

Where is regulation likely to lead in increasingly digital / AI world?

- Should privacy remain at the forefront?

Questions & Contacts



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Data Protection and Privacy Legislation Worldwide - <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>

GDPR Enforcement Tracker - <https://www.enforcementtracker.com/>