



LEGAL AND IMMIGRATION SERVICES

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Legal and Immigration Services

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Greetings from Legal and Immigration Services (LIS). Whether on campus or taking a summer break, our office extends best wishes to all students, staff and faculty during the Spring 2018 term. For this issue of *Res Controversa*, we will be discussing the European Union (EU) General Data Protection Regulation (GDPR).

GDPR

As technology evolves and online capabilities continue to expand, law-makers are adapting to address this reality. The inaugural issue of this publication dealt with changes brought about by Canada's Anti-Spam Legislation (CASL).

The EU GDPR was designed to harmonize data privacy laws across Europe to protect all EU citizens' data privacy and took effect on 25 May 2018. The GDPR deals with the collection and processing of personal information of individuals within the EU. Here are some noteworthy areas of the new law:

Applicability of the GDPR Outside of the EU

The GDPR is unique as it applies to entities within and outside the EU that handle the data of individuals residing in the EU. Article 3.2 of the GDPR provides:

This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:



(a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

(b) the monitoring of their behaviour as far as their behaviour takes place within the Union.

Thus, if a Canadian organization is controlling or processing the data on individuals within the EU and it relates to offering them goods or services or monitoring their behaviour (e.g. online tracking) within the EU, the GDPR applies. This extraterritorial aspect means that the GDPR will likely apply to some activities in which the University of Waterloo (UW) engages. Some examples where GDPR would apply at UW include:

- UW receives personal data from Alumnus living in the EU;
- A new UW student from the EU sends personal data to UW in advance of their arrival; and
- A person located in the EU, with no affiliation or connection to UW whatsoever, who accesses UW's website and has cookies placed on their browser

The GDPR defines personal data broadly and takes into consideration technological developments such as online identifiers, location data, and internet protocols.

Consent

If an entity is going to collect and process an individual's data, consent must be given by "a statement or a clear affirmative action." Silence or inactivity does not constitute consent. Where it is clear that the parties have unequal bargaining power, the GDPR considers a presumption that consent has not been freely given. Moreover, an individual must be able to withdraw their consent. Any existing consent may need to be updated to ensure GDPR compliance.

Enforcement

Our office has received confirmation that enforcement begins in earnest in January 2019 at which time failure to comply with GDPR could result in significant fines being levied against UW.



We will be working with the UW community to ensure compliance with GDPR.

Rights of Individuals

Under the GDPR, individuals whose data is being collected and processed have rights. These include:

- **Right not to be subject to automatic data profiling:** An individual is able to be free from online tracking. This right can be exercised at anytime. If an individual initially consents to this tracking, this individual can later retract this consent.
- **Right to access:** Upon request by an individual, a data collector must provide to the individual the personal information it possesses regarding that individual.
- **Right to be forgotten:** Upon request by an individual, an entity must erase the personal info it possesses regarding that individual. There are exceptions to this right to erasure.

Next Steps

It should be noted that the rights enumerated above do come with exceptions. For greater certainty and instructions on how to follow this new law, please contact lis@uwaterloo.ca.

LIS will continue to share information and advice with the UW community regarding GDPR and how UW can ensure GDPR compliance. In addition, LIS will be posting a Daily Bulletin article, in collaboration with UW's Privacy Officer. LIS will be arranging future information sessions for the UW community.

IMPORTANT DISCLAIMER

The information contained in this newsletter is not meant to be legal advice, and the reader should not depend on it as legal advice. For clarification of these issues specific to your situation, or for any matter on which legal advice may be required on behalf of the University of Waterloo, please contact Legal & Immigration Services.

[\(https://uwaterloo.ca/legal-and-immigration-services/\)](https://uwaterloo.ca/legal-and-immigration-services/)