Data protection law & Intermediaries
EU Charter Fundamental Rights 2000
Privacy & data protection

Art 7 EU Charter: right to privacy
Privacy & data protection

Art 8 EU Charter: personal data

‘Everyone has the right to the protection of personal data concerning him or her.’
General Data Protection Regulation (GDPR)
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The GDPR is without prejudice to the application of the liability rules of intermediaries in the eCommerce Directive

Art 2(4) GDPR. Recital 18 & 21
eCommerce Directive

‘This Directive shall not apply to questions relating to information society services covered by the [GDPR / Data Protection Directive]’
eCommerce Directive + GDPR

Unclear
Search engines

No specific safe harbour in eCommerce directive
Costeja González
CJEU: Google Spain judgment
‘Right to be forgotten’

CJEU: Google is a ‘controller’
if it indexes, and refers to, websites
that include personal data.

Must comply with data protection law.
Should intermediaries disclose subscriber data to copyright holders?
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Promusicae asked to ISP:

We have IP addresses of file sharers: give us their names!
Should intermediaries disclose subscriber data to copyright holders?

CJEU says:
In EU law, no requirement

CJEU, C-275/06, 2008, Promusicae
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In EU law, no requirement & no prohibition.

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‘fair balance’ between fundamental rights
Intermediaries & data protection: Good news!
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Relation is unclear & complicated
Intermediaries & data protection: Good news!

Relation is unclear & complicated

Work for lawyers & academics!
Thank you!

@Fborgesius