

August 29, 2018

Legal Alert: Should My Nonprofit Organization Be Concerned about the European Union's New Data Law?

On May 25, 2018, the European Union implemented the General Data Protection Regulation (GDPR). In addition to changing how personal data should be treated by companies, the GDPR greatly expands the scope of who is covered by European privacy laws and also greatly increases the fines and penalties. If a company that is subject to GDPR fails to comply, then it can be hit with a penalty of either up to €20 millionⁱ or 4% of the worldwide annual revenue of the prior financial year, whichever is higher.ⁱⁱ

1. My organization doesn't operate in the European Union. Does GDPR apply?

The law doesn't only apply to companies that operate within the European Union. In fact, the law specifically includes language that applies to companies outside of the EU. Article 3 of the GDPR says:

“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 behavior as far as their behavior takes place within the Union.”* (emphasis added)

In general, if you offer goods or services within the EU or if you monitor the behavior of people within the EU, then this law is something with which you must comply.

2. What does it mean to offer goods or services to or monitor the behavior of people within the EU?

While there is no exact definition either term,ⁱⁱⁱ practically speaking, a nonprofit could be offering goods and services or monitoring the behavior of people within the EU in several ways.

If a nonprofit's website is translated into French or German, or any other language specifically used in an EU member state, for example, or if it mentions donors or funders that are people within the EU, you may be considered to be offering goods or services to people within the EU.

With respect to monitoring the behavior of people within the EU, there is an argument to be made that any website that collects cookies or an app that tracks usage subject to the GDPR, though it is unlikely the EU intended this to be quite that broad.^{iv}

On the most basic level, however, if your nonprofit has ever received a donation from someone within the EU, or included someone within the EU on your newsletter listserv, you have collected personal data and are likely subject to the GDPR.

3. Isn't the GDPR only applicable to for-profit corporations?

No! It's a common misconception that the GDPR does not apply to nonprofits, but the GDPR does not discriminate. It applies across the board to *any* organization that collects the data of someone within the EU.

4. Next steps for nonprofits that are potentially subject to GDPR

Determining exactly what steps need to be taken can be a challenging question that depends on an organization and specifically what it does with data. If you are worried about GDPR compliance, you should carefully evaluate your organization's risks and potential gaps in GDPR compliance. At a minimum, you would probably need to draft a GDPR-compliant privacy policy, but depending on the size of your organization and the amount of data you collect, other potential steps your organization might need to take include:

- Getting consumer consent for all personal data;
- Hiring a Data Protection Officer to monitor data subjects;
- Performing a Data Impact Assessment;
- Sounding the alarm on any data breaches with 72 hours of discovery; and
- Respecting consumers' rights to remove all data from an organization's storage.

If you are concerned your organization might be subject to GDPR, contact Lawyers Alliance as soon as possible. Our network of attorneys includes those with experience on advising clients on both whether or not they are subject to GDPR, and how to comply if it is determined they are.

5. If I don't fall under the jurisdiction of GDPR, should I be completely unaware of online privacy laws?

California is in the process of implementing sweeping privacy law, and though it appears that nonprofits are exempt from this law, this is not immediately apparent from the law itself.^v Other states and countries are discussing implementing new privacy laws constantly.

Even if your organization operates strictly within New York and with New York residents, it is always important to keep up to date with privacy laws as more states or countries might be passing new ones that could affect your organization's online presence.

This alert is meant to provide general information only, not legal advice. If you have questions about GDPR, please contact Ciarra Chavarria at (212) 219-1800 ext. 228 or visit our website at www.lawyersalliance.org for further information.

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ⁱ As of August 20, 2018, €20 million is equal to roughly \$22,923,680.

ⁱⁱ We do not yet know to what degree the EU will enforce these penalties on entities outside of the EU, but all entities who fall under the law's jurisdiction are subject to these penalties.

ⁱⁱⁱ GDPR's Recital 23 provides a non-exhaustive list of things to weigh when considering whether or not an organization does this.

^{iv} See generally The True Global Effect of the GDPR at

<https://www.lexology.com/library/detail.aspx?g=d623a97b-9b40-4710-be2e-77e496c0c685>

^v See generally New California privacy law to affect more than half a million US companies at

<https://iapp.org/news/a/new-california-privacy-law-to-affect-more-than-half-a-million-us-companies/>