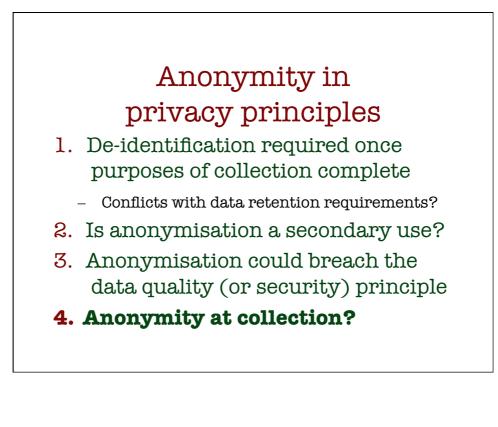
transactional anonymity in privacy principles – Australia and elsewhere – <u>Graham Greenleaf</u> UNSW Faculty of Law OII AnonEvent, London 8-12-11





- Directive A6(1)(c) requires data collected be 'not excessive' in relation to purpose of collection.
 - Kuner (2006) sees A6(1)(c) as one basis of 'data minimization' principle that the minimum data should be processed
 - Bygrave (2003) thought that requirements of anonymity could be implied from the general 'data minimization' approach of the Directive
 - Both cite only German law as requiring anonymisation
- Conclusion: As part of EU law, a requirement of anonymous transactions is 'unproven'



Outside Europe

- Neither the OECD Guidelines nor APEC Framework require minimality in collection or de-identification after use
 - These omissions are two of their main weaknesses
- However 21/28 data privacy laws outside Europe follow Europe in requiring collection be limited to the minimum information necessary for the purpose of collection (Greenleaf 2011)
- But explicit requirements of anonymous transactions are as rare outside Europe as they are within the EU ...

Which laws **don't** require minimum collection?

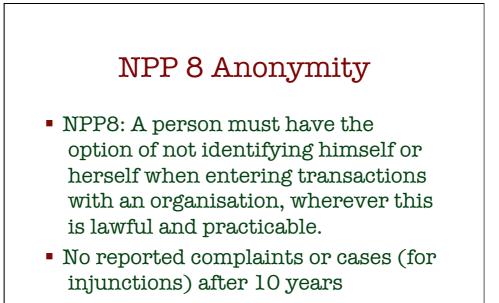
- The not-so-magnificent seven:
 - Malaysia
 - Kyrgyz Republic
 - Mexico
 - Bahamas
 - Japan
 - Chile
 - Vietnam
 - A roll-call of the world's weakest data privacy laws
- Minimality is standard; anonymity not yet

The strange story of NPP8 (*datenschutz* down under)

- Germany passed an Act ...
- Lee Bygrave wrote an article ...
- Simon Davies convened a circus ...
- Nigel Waters & I helped write a Charter ...

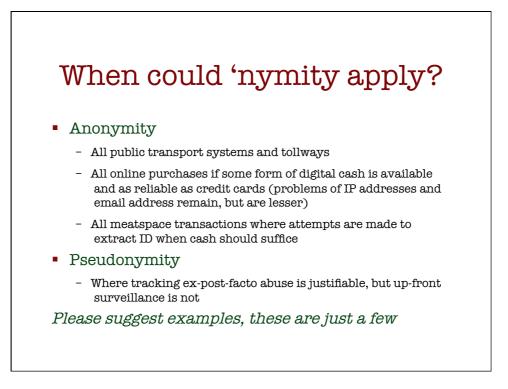
... years passed ...

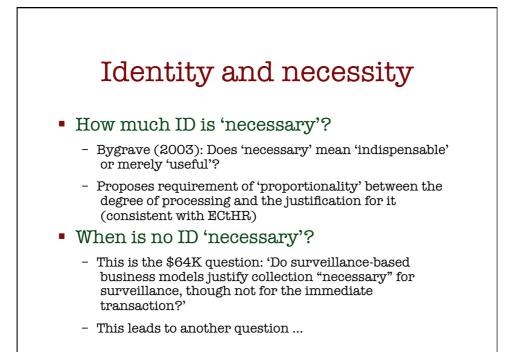
- The government did a U-turn ...
- The Privacy Commissioner plagiarised ...
- Parliament was asleep ...
- ... And NPP 8 arrived in Oz ...

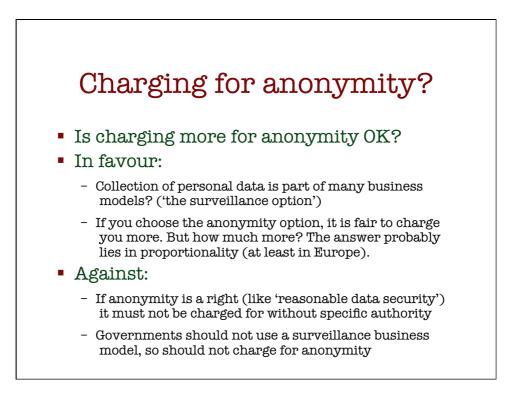


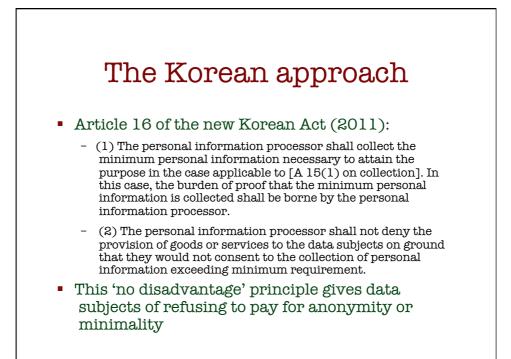


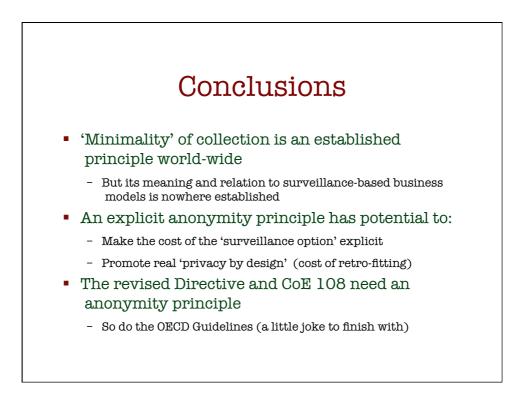
- Draft Bill before Australian Parliament
 - APP2: 'Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an entity.' (includes government)
- Principle may be strengthened, or destroyed - fate unknown
 - Including pseudonymity as well is good
 - Requires clarity that anonymity must be offered first
 - Dangerous proposed exception wherever an entity is 'authorised' (not required) by law to identify individuals (worse than previous 'wherever lawful and practicable')











And a postscript ...

- The leaked proposals for an EU Regulation (+Directive) on 6/12/12:
 - A83 ('Processing for historical, statistical and scientific purposes'): Research projects must be carried out with fully anonymised data if possible; if not, pseudonymised data should be used (with key kept separately).
 - Considerable dangers that this may substitute for consent (beyond scope here)
 - So anonymity and pseudonymity are proposed to make their first explicit appearances in EU data privacy law. But it is not enough.

