

THE EU – U.S. PRIVACY CONTROVERSY:
A QUESTION OF LAW OR GOVERNANCE?

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ABSTRACT

The EU and the US are at a deadlock over different levels of privacy protection. The two sides have made cooperative efforts to bridge the gap between their diverging privacy regimes without satisfaction. This paper will review the sources of conflict in the controversy over privacy protection. This thesis will argue that the international debate has failed to provide a viable solution because it fails to address the real source of conflict. It has been assumed that the conflict is due to substantially divergent legal traditions. At a first glance the reason for the dispute appears obvious: One system (EU) considers privacy rights to be fundamental human rights, the other system (US) considers privacy rights to be a tradable commodity. However, this paper argues that the conflict is caused by different governance traditions, not legal traditions. In other words, privacy regimes reflect fundamental different visions of governance in a society. Therefore, even if basic principles are shared between the EU and the US, when these principles are implemented at a domestic level they inevitably lead to different levels of protection.

This thesis further argues that a solution to the privacy problem is challenged by rapid technological developments, and domestic privacy debates. This paper concludes that international co-operation on how to protect privacy is the right path, but that only an effort to address the difference in governance philosophies will provide a functional solution.