

The Internet of Things: The EU legal framework

7 September 2017

Kevin Calder – kevin.calder@mills-reeve.com

Agenda

- Building an IoT legal framework: the EU angle
 - Cyber security
 - Data protection
 - Terms and conditions and liability
- For each area
 - Why particularly a challenge for IoT
 - Key legal challenges for any framework to resolve

Internet of Things in the EU

- Market value of the IoT in the EU expected to exceed **one trillion** Euros in 2020
- Key focus of the European Commission: 3 pillars:
 - Single market for IoT: devices and services should work seamlessly across the EU
 - Develop a thriving IoT ecosystem including use of open platforms where possible
 - Human-centred IoT: high and trusted standards of protection of personal data and security

Leading EU IoT provider



British Gas

Real world examples

- o Hive smart heating controller



Real world examples

- o AGFEO - German smart home provider
 - smart home controller

AGFEO
einfach | perfekt | kommunizieren



Real world examples

- o Miele web connected dishwasher



Miele

Real world examples

- o Purple wifi

- Manchester based firm Purple added a “Community Service” clause to their usual wifi terms and conditions



Real world examples

The user may be required, at Purple's discretion, to carry out 1,000 hours of community service. This may include the following:

- Cleansing local parks of animal waste*
- Providing hugs to stray cats and dogs*
- Manually relieving sewer blockages*
- Cleaning portable lavatories at local festivals and events*
- Painting snail shells to brighten up their existence*
- Scraping chewing gum off the streets*

Real world examples

- 22,000 people signed up for the free wifi over a two week period
- A prize was on offer to anyone who spotted the “Community Service” clause
- Only one individual claimed the prize

Cybersecurity and IoT

- Key issue given real world impact of IoT
- Common themes
 - Lack of testing of consumer products
 - Security not prioritised over time to market
 - Users lack awareness of the risks and will not pay a premium for security
 - Vendors not geared up to respond quickly when issues are identified

Cybersecurity: EU position

- Network and Information Systems Directive
 - In force in EU from 9 May 2018 (at the latest)
 - Member states consulting now
 - Restricted to “essential services” (water, energy, healthcare etc) and larger digital service providers

Cybersecurity: EU position

- ENISA (EU Cyber Security Agency)
 - December 2015 report:
 - “the need for security in Smart Home Environments is still underestimated and vendors lack incentives toward this goal”*
 - July 2017: plans for New EU Cybersecurity Strategy

Data protection and IoT

- Key to develop trust in use of data by multiple internet connected devices
- Common themes
 - Consent issues
 - Lack of clarity on “ownership” of data / risk of vendor “lock-in”
 - Multiple entities involved in processing data
 - Cross border issues

Data protection: EU position

- General Data Protection Regulation
 - Increased requirements around consent and associated information provision
 - Applies across supply chain to processors
 - Enhanced user rights: withdrawal of consent; deletion; porting to a new provider
 - Extra territorial
 - Substantial potential fines

Data protection: EU position

- Privacy and Electronic Communications Regulations
 - Specific rights in relation to electronic communications
 - Supplement GDPR
 - Under review to take into account IoT issues

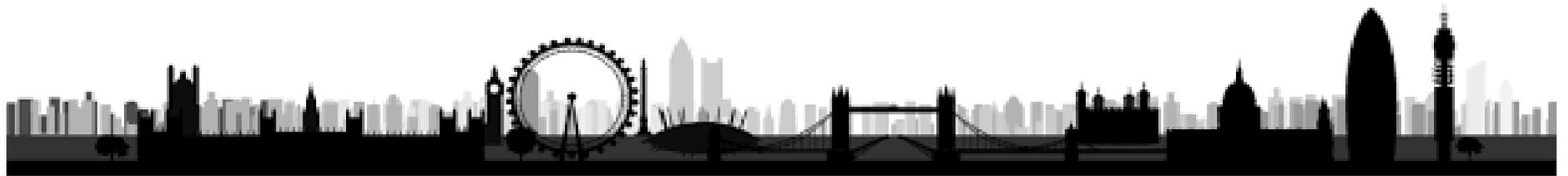
Ts and Cs and IoT

- Key to be confident that terms are understood and enforceable
- Common themes
 - Multiple sets of terms and conditions
 - Terms written for one jurisdiction and not reviewed for local law compliance
 - Consumer law protections not always taken into account potentially impacting enforceability

Ts and Cs and liability

- Consumer protection for IoT
 - Clarity of terms and conditions vs click to agree
 - Onerous provisions for consumers eg “bricked” devices
- Determining liability for unsafe technology
 - Given interdependencies, who is responsible
- Liability limitations
 - Consumer legislation
 - Unfair contracting provisions

Q and A?



thank you



T +(0)344 880 2666 www.mills-reeve.com

Offices: o Birmingham o Cambridge o Leeds o London o Manchester o Norwich

Mills & Reeve LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority and registered in England and Wales with registered number OC326165. Its registered office is at Mills & Reeve LLP, Monument Place, 24 Monument Street, London, EC35 8AJ, which is the London office of Mills & Reeve LLP. A list of members may be inspected at any of the LLP's offices. The term "partner" is used to refer to a member of Mills & Reeve LLP.

The contents of this document are copyright © Mills & Reeve LLP. All rights reserved. This document contains general advice and comments only and therefore specific legal advice should be taken before reliance is placed upon it in any particular circumstances. Where hyperlinks are provided to third party websites, Mills & Reeve LLP is not responsible for the content of such sites.

MILLS & REEVE