

The European Legal Background to Digital Archiving



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Data Protection in a Changing world

The adoption by the EU of the Data Protection Directive (95/46/EC) marked a pivotal moment in the history of European personal data protection.

The increasing pace of technological change presents new challenges.

The world of the early 21st Century is the world of social networking, apps, cloud computing, location-based services and smart cards.

It is almost impossible for individual citizens to go about their daily business, or to buy goods and services without leaving digital footprints.

Without effective control over how this information is stored and used, the potential for adverse consequences is obvious.

The E-ARK Legal Study (D2.2)

D2.2 European Archival Records and Knowledge Preservation

Scope of the report:

- Data Protection Law (mainly Directive 95/46/EC)
- Law on the Re-use of Public Sector Information
- European Copyright Law



EC's reform of data protection rules

- Fines and enforcement (5% global annual turnover)
- Territorial reach (extended beyond EC)
- Scope of personal data (broadened definition of personal data)
- Justifications for processing (stricter rules for retention & use)
- Data protection officers (to be made compulsory?)
- Security and breach notification (mandatory)
- Processors and supply chain (Data-related liabilities will increase)
- Profiling (Scope not settled – affects employers and advertisers)
- Data portability (Cost of compliance?)
- Right to be forgotten (Not absolute / not always possible)
- International transfers (rules extended to 3rd countries)
- Privacy by design (minimum personal data / minimum disclosure)

Main Conclusions

- The reform amounts to a fundamental revamp of Europe's data protection rules
- Simplifies and extends significantly the reach of EU legislation
- Archives (& others) should take a conservative approach to personal data (min data / min time)
- Right to be forgotten vs right of expression. Erase vs obscure. Court cases will follow!
- Archives (& others) should incorporate Privacy by Design. Ad Hoc approach will not suffice.
- Wider jurisdictional scope asserted but will it be backed by funding to enforce it?
- Personal Data Breach Notification – 72hrs cautious. Controllers may over report. System failure?
- Legal enforcement & Penalties – much more serious than before.

Overall.....

- The legislation is still over-complex and inconsistent

How should the Archiving Community Respond?

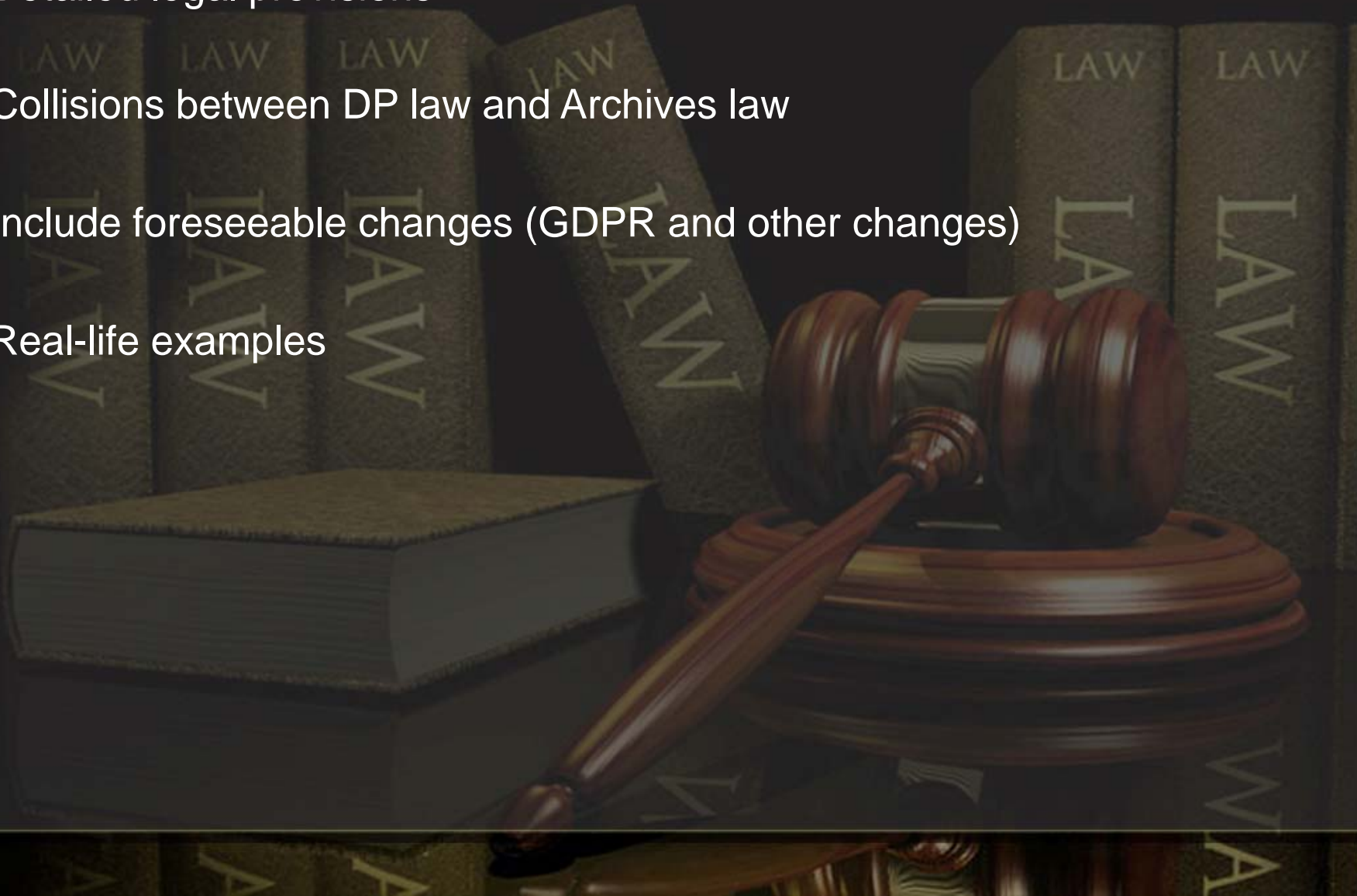
DLM Forum Meeting Oslo 2016 Recommendations:

- Analysis
- Inventory
- Professional Contacts
- Expert Group(s)
- Visibility



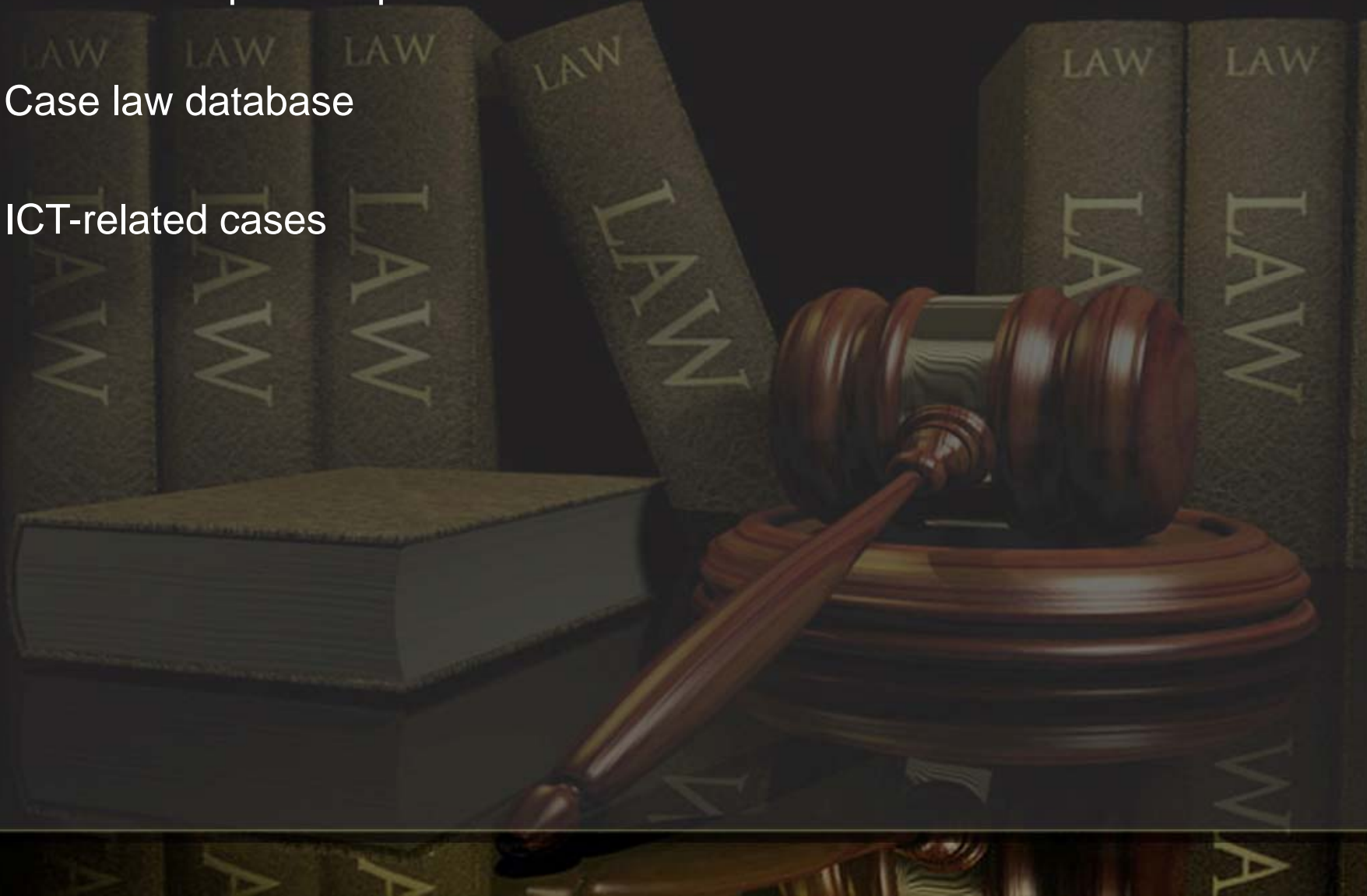
Analysis

- Detailed legal provisions
- Collisions between DP law and Archives law
- Include foreseeable changes (GDPR and other changes)
- Real-life examples



Inventory

- Former and present problems + formal/informal solutions
- Case law database
- ICT-related cases



Professional contacts

- Data Protection expert groups
- EU bodies (European Data Protection Board)
- National Data Protection Authorities



Expert group(s)

- Establish/extend formal/informal archival/Data Protection professional groups
- Communicate with professionals and EU bodies
- National Data Protection Authorities
- Issue recommendations



Visibility

- Panels/presentations at DP conferences
- Archival fora
- Publications
- Interviews etc.



Questions

