

From Values to Value

Ethics and risk balancing in the era of Big Data

Michelle Dennedy: Albert Einstein once said, "Relativity applies to physics, not ethics." Sounds great in theory but in reality, what is ethical these days, at least, is often open to interpretation. When does good use become bad use? How much lost privacy is okay, in air quotes, because it's for a greater common good? Or, paraphrasing another great scientist, "When do the needs of the many outweigh the needs of the few, or the one?" It's time for a little Ethics 101 with the Privacy Sigma Riders.

Cybersecurity, data protection, privacy. You like to stay ahead of the curve and listen to experts who are leading the way in deriving greater value from data, with a more organized approach to data privacy. You're like us, just a few deviations past the norm. You are a Privacy Sigma Rider.

Hello, and welcome, all you Privacy Sigma Riders. It's Michelle Dennedy with you once again along with two heavy hitters in the world of privacy and, not gonna lie, a major bromance that has been going on for ages. I've been trying to crack the code.

Jonathan Fox: Shhhh...

Michelle Dennedy: Our very own Jonathan Fox, my longtime business partner, co-author of our book, *The Privacy Engineer's Manifesto*, is back with us. Welcome, Jonathan Fox.

Jonathan Fox: Happy to be here.

Michelle Dennedy: I like to call him the Silver Fox, but he thinks it has to do with his hair not his tie, so I have to find a better name.

If you're a privacy professional, our next guest needs no introduction. He's none other ... I think there should be a drum roll here ... the Chairman of the Board at the IAPP (that's the International Association of Privacy Professionals), the Chief Digital Risk Officer at Citrix Systems (say that 10 times without making your podcast producer go crazy), Mr. Peter Lefkowitz. Welcome, Peter.

Peter Lefkowitz: Oh, thank you, Michelle. Thank you, Jonathan. I'm so happy to be with you.

Michelle Dennedy: We're so excited to have you. And Jonathan, I have to say, so Jonathan Fox and I both live out here in the Bay Area, and whenever Peter comes to town there's a secret breakfast, and I'm not invited. So that's why I tease about the bromance. But it's not really teasing.

Peter Lefkowitz: It's Hobee's. It's Hobee's, 7 a.m. every time. You are welcome, my dear.

Michelle Dennedy: Game on.

Jonathan Fox: Can't beat the cake.

Michelle Dennedy: Can't beat ... that's true.

Jonathan Fox: And the company.

Michelle Dennedy: The cake and the company, and not necessarily in that order. So, Peter, before we go off and have cake at Hobee's, we're jumping the gun a bit. We're gonna talk about ethics today, and first, before we go into that, can you talk to us a little bit about, I mean, we've known you forever, but tell everyone who's listening today a bit about your background, how you prepped for this, and about your dual role, and sometimes dueling role, as IAPP Chairman and Citrix Digital Risk Officer. That's a big lump of questions, so can you cover like the past few years or so-

Peter Lefkowitz: Wow.

Michelle Dennedy: ... in an answer?

Peter Lefkowitz: So, the past 20 years, in a nutshell. I spent 15 years at Oracle. I was mentored by the late, great Joe Alhadef.

Michelle Dennedy: Truly great.

Peter Lefkowitz: The chairman of all things privacy. And then I spent five years at the General Electric Company, focused on privacy and digital issues. All things having to do with Internet of Things. And last year, I joined Citrix Systems as Digital Risk Officer. So, I have what's probably the greater reality of what we do today as folks who came from privacy, which is, privacy and security regulatory and public engagement and public policy around data and digital risk, and M&A around data.

And all of those issues that get bound up in a world of greater laws that are no longer just privacy. It's privacy and it's security and it's data stewardship and it's ownership and controller-ship and all of those things in a ball that you guys have been writing about for so long.

Michelle Dennedy: It's amazing, I mean, as they say in the Bronx, "That's huge, Peter, that's huge." So, let's talk a bit about your background. So, a lot of people are coming from different directions in the data risk and, you know, pretty soon we're going to stop saying data and digital risk. It's just part of risk, right? So, what is your background and training? Are you a technologist, a lawyer maybe?

Peter Lefkowitz: I am a lawyer. I am a recovering litigator.

Michelle Dennedy: Excellent.

Peter Lefkowitz: You know, after 20 years, I think I'm on Step Nine or Ten. But I am, I was a litigator for a long time before getting into commercial contracting, and from there into supporting Oracle's technical support organization and then deeper into data and privacy issues.

Michelle Dennedy: And I think, you know, as someone similarly suffering probably around Step Nine or so, I think the practice of litigation in particular forces you into taking literally a step-by-step approach and to convey the risks and the rewards and two sides of the story to an audience that may not necessarily be directly germane to the specialists.

So, I want to turn this back over to the bromance a little bit, but before we dig deeper in, let's talk a little bit about life after GDPR. How are things going over there? Are you surviving? How's it going?

Peter Lefkowitz: So, you know, I never thought I would have said this two years ago, but the accountability framework, right? So, for those of you deep in the trade, Articles 5 and 25 to 36 of the GDPR, have actually lent a little bit of organization to our lives. And a little bit of structure, and it has forced a methodology and a structure and some planning and some good old-fashioned risk management around our field.

And so, you know, sort of wearing the privacy hat, wearing the privacy lawyer hat, has been really, really interesting and engaging. And I think for the first time, as a privacy officer, I feel like there's a little bit of outside structure around what we do. It's kinda neat.

Jonathan Fox: And I would agree with you Peter. I always, I've called GDPR the gift that keeps on giving. And the main thing it keeps on giving is the notion of accountability, and when I talk to my stakeholders, I say, "This is the clarion call to organize a program, to have structure, to do things." The regulators know things will happen. It's not an if, it's a when with them. And what they really want to see is, there was a program and this was something out of bounds as opposed to there was nothing there.

Peter Lefkowitz: Right, I think you're exactly right, Jonathan. And you know, what we're seeing so far, right, it's very, very, very early days. But what we're seeing so far, or at least what we're hearing so far, is that the regulators get that there's a risk analysis, and that's very empowering. And it also gets us to think in a way and to work in a way that's more aligned with our management's. And with, you know, whether we're a nonprofit, for profit, or government, or in a regulator's office, that risk balance, that creating a structure around thinking about benefits and burdens in the creation and use of data, puts us back into the business seat and I think helps our businesses, ultimately.

Jonathan Fox: Yeah, I would agree, and I feel the regulators have opened their kimonos a little bit and said, "Let's have a relationship."

Michelle Dennedy: Okay, I'm not going there. Okay, regulators—

Peter Lefkowitz: I'm sorry, I shouldn't laugh, it's true—

Michelle Dennedy: ... close those kimonos.

Peter Lefkowitz: ... but it just sounded funny.

Michelle Dennedy: So, speaking of benefits and burdens, I've got an image that is indelible in my mind now, should we move on quickly? To, you know, this is a kid's show. It's all good, it's all good, PG.

Jonathan Fox: Can I just mark the moment? I don't think I've ever made Michelle actually blush.

Michelle Dennedy: Or behave, like, look at me evolving. Who knew?

Jonathan Fox: It's quite, usually, the other way around.

Michelle Dennedy: Well, we're not done with this podcast, my friend.

So, speaking of nothing to do with this at all, let's talk a little bit about ethics. So, you mentioned benefits and burdens, which I love, you know, I love the balance of benefits and burdens. Of course, as a Chief Risk Officer, I would expect for you to talk about that. Ethics is something that feels like it runs across. So, how do you view the confluence of benefit, burden from a risk perspective as well as ethics? And you hear that word being bandied about quite a good bit. But what does that mean to you, and how are you incorporating that into your work?

Peter Lefkowitz: Well, I'll be honest with you guys. I am struggling to make sense of ethics. I think a lot of people are struggling to make sense of ethics in this field, right? Accountability—

Michelle Dennedy: I think Aristotle struggled, you know?

Peter Lefkowitz: ... I'm sorry? Yes, yes. With Article 5, yes.

Michelle Dennedy: Yeah.

Peter Lefkowitz: But, you know, it's really interesting, right? If you look at what accountability is in our field, look at Article 5, right? Collected for specific and legitimate purposes, adequate, relevant, limited to what's necessary, kept up to date, secured, processed in a particular manner. Right? So, in preparing to talk with you guys today, I went out ... because you guys were in Santa Clara ... I looked at the Markkula Center for Applied Ethics—

Michelle Dennedy: As one does.

Peter Lefkowitz: ... at Santa Clara University.

Jonathan Fox: I spoke with someone on that faculty just last week.

Peter Lefkowitz: Well, here's what they have to say about ethics:

"Ethics is based on well-founded standards of right and wrong that prescribe what human beings ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues."

Now, I look at a definition like that, that is really meaningful and deep and talks about what we should be doing. And then I try to apply that to what we do today, and initially I draw a blank, because it's such a leap. Right? And then I step back and I say, "Well, why do we need this? Why do we need this in the field of data protection today?"

And I think the best case I can make is that there is a gap in the accountability framework that we have to think about, which is, we have ever larger sets of data being processed in ever more complex ways. And critically, really, really critically often for really important purposes. Right? Making cars safer, dealing with the aggregation of information for anti-money laundering, anti-

fraud, avoiding human trafficking, improving insulin pumps, improving heart monitoring. I mean, there are purposes for which we need large data sets.

And there is a gap somewhere in there, in this very complex landscape of, should we be doing what we're doing in a landscape where it is simply going to be difficult to say that we can give complete transparency, right? Can we give complete transparency around the amount of data that we aggregate in order to do Internet security? Or, to build the next insulin pump? That's kind of difficult. And so, I think that ethics, if we do it right, we're right on the cusp. If we do it right, we'll step in and say, "Are all of these ... in addition to having some level of transparency and some level of a discussion around consent, legitimate interest, is what we're doing right? Is the amount of data that we're collecting and the way in which we're using it right and ethical and fair?"

So, I'm going to stop there. Am I completely off base?

Jonathan Fox: No, I don't think so. I liken it to, it is a road map that will help us navigate the gray when we feel there's goodness to be done, but not all the requirements can be met. And then, it's a way to help manage and discuss the risk in a different paradigm than the one that we currently have. So that, if there is gaps, you're at least breaking in the right direction. We talk more about balancing tools. It's a way to use a balancing tool to the benefit versus the harms, and determine whether one outweighs the other. And for whose sake.

Peter Lefkowitz: I think that's right, Jonathan. And you know, I'll just say that ethics is a really big word to throw at that.

Michelle Dennedy: Yeah.

Jonathan Fox: Yep.

Michelle Dennedy: Yeah, and I think that's, that's part of the thing too, is I think, there's a number of things I want to unpack here, because I think there are ethics involved in the known, as you say. So, there are things, you know, the well-founded standards of behavior for things that we ought to do. There are things that we ought to do. We ought not pretend that we have currency that we don't have, that we are not entitled to. And so there are standards and there are frameworks, and then there is the question of who gets to know and what the punishment is. That's more of the well-founded standards of ought to do.

I think the gray that Jonathan refers to is, things that we may not have been capable of doing, which you referred to, Peter, of you know, there's accountability of, can we even provide transparency? Is it technically, physically, organizationally even possible to do certain things? And I think that is a gating framework of decision making.

And then there's other things that we can now do that we never were able to do before. Track someone on their phone, follow them on, you know, I was about to say CCTV, but it was pointed out to me yesterday that there's no more closed circuit and they're rarely on TV anymore. But cameras, security cameras and recordings, you can tie that to metadata and you can follow someone. So now we arrive back again to the beginning of that ethical analysis of, "Should we?" So, just because you can, doesn't mean you should.

And then, I think the other point I want to throw out to both of you guys, is, who gets to decide what's right? If we talk about Western ethic versus Eastern ethics, and you look at the way Western ethics have evolved, it's the individual rights of the person and then, society is drawn around that bubble of little capsules of human rights. And you try to infringe as little as possible on the rights of the individual for the good of the collective.

But Eastern evolved in a very different way. It was really a volume game of ancestry and the total collective, and then individuals fit in the roles within that framework. And neither is necessarily mathematically right or wrong. But it leads you to things like patent monopoly protections. In the West, we think that's ownership and the protection of creation of the mind. In the East, we think, "How selfish is that? You've come up with an innovation. It belongs to the collective."

So, where we think people are stealing by taking our intellectual property, they may think that we're being unreasonable by withholding that innovation. And so, I think this is where ... what is right and how do you decide? I mean, how do we, let's take it really small and like, for our companies, who gets to decide right and wrong?

Peter Lefkowitz: You know, I sense an entire other podcast episode coming on here.

Michelle Dennedy: Good.

Peter Lefkowitz: But, you know, East versus West. No, but it's really interesting, right? The Data Protection Commissioners are getting together in Brussels later in October, for those of you listening. After that happens, you know, look back and see whether we were right. But you know, they're getting together in couple of weeks in Brussels, and they're going to be talking the whole seminar, the whole conference is devoted to ethics.

And Michelle, you're absolutely right, you know, who's to say that the ethics that the Data Protection Commissioners, the European Data Protection Board, or NIST, or anybody else comes up with, is the right set of ethical principles? And then even further, that how we reduce that to practice is really going to encapsulate the right set of ethics.

Michelle Dennedy: And it's going to impact our-

Peter Lefkowitz: At the same time, we have to try, right?

Jonathan Fox: Mm-hmm [affirmative].

Peter Lefkowitz: We really have to try.

Jonathan Fox: So, I think this, the ethics discussion will be a bit like the GDPR, CBPR discussion.

Michelle Dennedy: Well, you have to lay out those acronyms.

Jonathan Fox: The General Data Protection Regulation and the Cross Border Privacy Rules. One is a European paradigm for managing privacy; one is an Asian paradigm, or Pacific-country paradigm. And they have commonality but they have differences, and there are efforts to also, then, ultimately find

middle ground. And so I don't think, I think being the one non lawyer in the room, I always give the lawyerly, "It depends" on who will win, based on context and situation. Because both models will be valid.

Michelle Dennedy: Yeah, and I think you point out a really good one, Jonathan, because I think both of those models of cross-border data transfer in particular, they attempt to harmonize very disparate types of economies and the way that systems have evolved over the years.

I think the other thing, lens, to put on this ethical challenge is, you know, we are the gray hairs deciding right now, what telecommunications and other types of interactive models will look like for a younger generation that appears to have a different sense of modesty if not judgment. What do you guys think about, you know, do the young people get to ultimately decide what's ethical and what's not?

Jonathan Fox: I'll venture, I think the future ultimately gets to decide.

Michelle Dennedy: So, the young people win because we die? That's what Bruce Schneier says.

Jonathan Fox: Yeah, I'm not saying the young people. But-

Michelle Dennedy: There's always a new crop of them.

Jonathan Fox: ... but this is an evolving discussion, and one generation, young or old, within that generation will look back on the behaviors and actions of the other generations that preceded, and make judgments, and take from those generations what knowledge they can and move forward with it.

Michelle Dennedy: I hope they keep moving forward.

Peter Lefkowitz: And in addition to that, I think, look. Look at where we've gone in just the last six, seven, eight years, right?

Michelle Dennedy: Yeah.

Peter Lefkowitz: When Google Glass came out, it was a little ahead of its time. Today, you have people using technologies, the oculus type technologies or the Google Glass type technologies in the workplace. Expansively. The technological advance, the boundaries of technology, of AI, of machine learning, of haptic response and biometrics are stretching and requiring us to stretch. And I think that to Jonathan's point, the next generation or hopefully us, if we're adaptive enough, are gonna have to incorporate all of that into our model.

Michelle Dennedy: I feel like we're pretty nimble.

So being nimble, let's quickly pivot a bit and talk a little bit about accountability. Big wins with federal standards, you know, how do you feel, you know, we just had a terrific Deputy CISO from the Secret Service on the show recently, and we're talking about the private versus the public sector. What do you think about, how are we doing? How do we stack up against governments, US and abroad, public versus private sectors, in these areas?

- Peter Lefkowitz: Well, I'll tell you one thing I'm pretty excited about. And I'm dodging your question a bit. But, but-
- Michelle Dennedy: Sure, so often they do.
- Peter Lefkowitz: ... yes, yes. Well, NIST is starting work on a privacy standard, and I have high hopes for it. You know, we can't solve all of the issues with a government standard around accountability, but man oh man, there are a lot of things that can get baked in there. So, I'll give you a really simple couple of bits in there, that, where we can make some progress.
- I think that the NIST standard, the NIST framework, can do a lot on de-identification, which is going to be a really critical area for us, going forward. What does de-id ... what does reasonable de-identification mean? I think that standard can attack it.
- The whole issue around, not necessarily opt in versus opt out, but what are the models that you can use for transparency, and what are some of the tools that are available to you around transparency? And, so, you know, I said to you I'm dodging your question. I don't know exactly-
- Michelle Dennedy: Totally dodging.
- Peter Lefkowitz: ... what is private industry doing versus what government's doing. But I think that NIST and the Department of Commerce are starting to set some standards that should, if well done, bridge government and the private sector, and bridge the United States, Canada, Europe, and a big chunk of Asia.
- Jonathan Fox: And I'll help Peter with his dodge. I think it's interesting that there are four, three, prominent standards efforts around privacy and privacy engineering. I've worked three, I guess. There's the NIST work, there's the ISO work, and there's the IEEE work.
- Michelle Dennedy: Now what's the ISO number? That's a new one for-
- Jonathan Fox: ISO 317.
- Michelle Dennedy: 317.
- Jonathan Fox: And it's focused on consumer goods.
- Michelle Dennedy: And IEEE 7002, and NIST has been a really terrific partner and a part of that protocol for a long time, too.
- Jonathan Fox: But what I'm getting at it is, for a long time, for those of us who started out at this at the turn of the century, we had principles. And we had Article 29 Working Party opinions. And now, we're finding both government and international organizations, NGOs, I guess you could call IEEE and ISO, trying, an effort to set guidelines and standards, which is higher. I've got my topology incorrect, but it's a more concrete articulation of how to proceed in this space. And having been participating in all three of those efforts, I'm, you know, they are different and have different flavors but they are all barreling down the same path that started with the FIPPS principles-

Michelle Dennedy: Fair Information Privacy?

Jonathan Fox: ... Yes.

Michelle Dennedy: Jonathan is the king of acronyms.

Jonathan Fox: Fair Information Practice Principles, though. Just. I like to keep them to three, but sometimes I go to four letters.

Michelle Dennedy: I use a lot of four letters, but none of them are acronyms.

Jonathan Fox: There's actually some debate about that, with one of them.

Michelle Dennedy: That's true, actually. That's true. So, I'm getting the high sign in the booth, so, wrap up from both Jonathan and Peter. Young people coming out of law school, coming out of the creative fields, coming out of marketing, coming out of technical school, how do you feel about privacy expertise? Good, bad? Do we have enough bodies?

Peter Lefkowitz: So, I'm helping teach a law school class this semester. And lemme tell ya. You've got people who are taking their first courses in privacy, who have such a rich body of material available to them, such deep understanding of why this area matters. And in turn, they come out of one semester of nominally privacy law class and they're getting GDPR, and they're getting accountability, and they're getting the NIST work, and they're getting practical approaches to privacy impact assessments and to the way that we do privacy out in the field. Man oh man, I wish had known that. It would've saved me about, you know, the first 10 years of learning.

Michelle Dennedy: Yeah, it's true.

Jonathan Fox: I will agree with Peter. I am deeply jealous of the knowledge base and the resources they have to draw from. It's just on a completely different level than when we started. What we had to puzzle through is matter of fact and common sense.

Michelle Dennedy: So, it sounds like even though we're tackling things like risk and ethics and these massive questions of should, ought, can, closing thoughts from each one of you? Is the future bright, or is this a "privacy is dead" conversation again?

Peter Lefkowitz: I'll say, I think the future is bright. Here's what I worry about. I look at the newspaper every day now, and I see all of these articles about how privacy is dead, about how social media and all of these other things that are sort of conflated up as the big evils, are killing it. And going back to where we began this discussion, with ethics, there are so many good things that we can do with data today. And by good, I mean, for the common good. There's so many things that we can do, right?

Citrix and Cisco are both broadly in the space of protecting systems and protecting the Internet. Well, you can't have privacy without security. But we have to tackle, like, how do you do this with massive sets of data? I think the future is bright. What I worry about, at the margin is, are we conflating too many things and creating too many worries, and are we going to wind up in a space where we, like, regulate ourselves out of existence?

I think we have an opportunity now, between accountability and some discussion of ethics, to create a nice balance. As long as we don't all freak out and jump off the bridge with a big rock, you know, names like bad data uses.

Michelle Dennedy: Benefits and burdens again. Jonathan Fox, take us home.

Jonathan Fox: I believe it's bright, and I was thinking about this as I drove in from work yesterday. There was a time when we did not know how to cure massive diseases that killed hundreds of thousands of people, bubonic plague, for instance. Influenza. We have had issues where we've had challenges, and so I think we're in that phase where we're still learning how to cure, how to maintain our health, how to vaccinate. And so, I do believe, some people say, "Well, the horse is out of the barn; the toothpaste is out of the tube" ... But we're constantly a new generation of people, and we have a constant opportunity to correct and perfect.

Michelle Dennedy: I like it. A positive note, a measured note, benefits and burdens. Thank you, Peter Lefkowitz, Chief Digital Risk Officer from Citrix, Jonathan Fox, Global Director of Privacy Engineering from Cisco. Thank you, gentlemen. You may go back to Hobee's and have an extra slice of cake.

Peter Lefkowitz: You guys just rock. This is awesome. And yes, Michelle, Jonathan and I have spoken. You are invited to the next breakfast. We'll even teach you the secret handshake.

Michelle Dennedy: Although, so I-

Jonathan Fox: Oh, wait, wait, wait. Wait.

Michelle Dennedy: ... Yeah, he's not willing to give it up. I do have to end, like if anyone is still with us, on the bitter end. So last time, I shamed poor Peter, after 20 years of friendship to having breakfast with me. I then had to go give a talk in front of 300 people and had such horrible food poisoning that they entered into the conference room and were faced with my large posterior poking out of a garbage bag, while I relieved myself of said breakfast with Mr. Peter Lefkowitz. So, thank you for the invitation. I have a feeling I'm just going to go and have water with y'all to save life, limb, and audience.

Jonathan Fox: The God of the Hebrew Bible is a mercurial creature.

Michelle Dennedy: And with that, it's a wrap on the Riders. You've been listening to Privacy Sigma Riders, brought to you by the Cisco Security and Trust Organization. Special thanks to Kory Westerhold for our original theme music. Our producers are Susan Borton and David Ball. You can find all our episodes on trust.cisco.com or subscribe wherever you listen to podcasts, and please take a moment to review and rate us on iTunes. To stay ahead of the curve between episodes, consider following us on Facebook, LinkedIn, and Twitter. And you can find me, Michelle Dennedy, on Twitter, @mdennedy. Until next time.