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Radio Frequency Identification Law Beyond 2007 **Answers to Six Questions**

for

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**Add-on: What can a radar chart with the axes
Globality, Verticality, Ubiquity and Technicity contribute to the legal
discourse?**



1. What is Law?

Law ist the product of legislature, judiciary and administration.

Two legal systems:

World Pioneer of RFID Law	World Pioneer Regions of Data Protection Law
USA	<ul style="list-style-type: none">■ Germany■ European Community

→ Pending "RFID" Legislation in 18 US States

2. What is “RFID”?

“[...] mainly the air protocol ties together all the different technologies.”

Californian Civil Code Section 57.2. h (1)

“Identification device”: means any item, application , or product that is passively or actively capable of transmitting personal information including, but not limited to devices using radio frequency technology.”

New York Assembly Bill 222 Section 2

“Radio Frequency Identification means any technology that uses radio waves or other wireless means to transmit identifying information between a tag, badge or other device and a reader without physical contact.”



3. Transmission of non-personal information – the “Bag Scenario”

“The Apenheul (Netherlands) is a zoo specialized in all kinds of monkeys. An outstanding feature of the park is the opportunity for the monkeys to move freely through the crowd of visitors. Curious as they are, the monkeys often try to open visitors’ bags in hope of a free lunch. The park therefore introduced the “Monkey bag”, a green bag with an extra clip lock which monkeys cannot open. The bag is obligatory [...] Aside from this security reason for implementing the bag, the department of marketing added a marketing feature to the bag: scanning visitors movements through the park through an active RFID sewn into the bag [...]”



3. Transmission of non-personal information – the “Bag Paradigm”

- Bag scenario complies with traditional informational privacy law
- It is evident that such tracing should not be legally prohibited
- Principle of transparency for non-personally identifiable information
- Value of criticism and postulation of choice

→ **Bag paradigm: duty to information**



4. How many “RFID” scenarios involving (personal) information do we have?

- monitor products (Electronic Product Code scenario = **EPC**),
- monitor animals (Real-time authentication and monitoring of animals scenario = **RTAMA**),
- monitor persons (Real-time authentication and monitoring of persons scenario = **RTAMP**) or
- collect data for profiling purposes (Aggregation scenario = **AGG**)

4. How many “RFID” scenarios involving (personal) information do we have?

In which scenarios does existing privacy law cover the issues?

World Pioneer of RFID Law	World Pioneer Regions of Data Protection Law
USA	<ul style="list-style-type: none">■ Germany■ European Community
For the subcutaneous “RTAMP” there is law in North Dakota, Wisconsin and California.	For “RTAMP” (except subcutaneous implantation), “AGG” and “RTAMA” we don’t need new law; for “RTAMA” perhaps utilization legislation.



4. How many “RFID” scenarios involving (personal) information do we have?

“RTAMP” (Real-time authentication and monitoring of persons) scenario

Californian Civil Code Section 57.2.

“(a) Except as provided in subdivision (g) a person shall not require, coerce, or compel any other individual to undergo the subcutaneous implanting of an identification device”

“EPC” (Electronic Product Code) scenario in the pending “Right-to-Know”- legislation



5. What are the questions “RFID” poses to the law? Five kinds of legislation

- (1) **Right-to-Know-legislation:** Mainly “EPC”-scenarios, Duty to Information, Removal of Tags
- (2) **Prohibition-legislation:** Prohibition of Subcutaneous Implants
- (3) **IT-Security-legislation:** IT-Security-Technologies for identification documents; No unauthorized reading and rewriting; no skimming or eavesdropping
- (4) **Utilization-legislation:** “RTAMP”-scenarios for inmates of correctional facilities
- (5) **Task-Force-legislation:** Round table, caucus

Pending RFID US State Legislation in 2007

State	Right-to-Know	Prohibition	IT-Security	Utilization	Task-Force
Arkansas	-	■	-	■	■
California	■	■	■	-	-
Georgia	-	■	-	-	-
Massachussetts	■	-	-	-	-
Michigan	-	■	-	■	-
Missouri	■	-	-	-	-
New Hampshire	■	■	-	■	-
New Jersey	■	■	■	■	-
New York	■	■	■	■	■
North Dakota	-	■	-	-	-
Oregon	■	-	-	-	-
Pennsylvania	■	-	-	-	-
Rhode Island	-	■	-	-	-
Tennessee	■	-	-	-	-
Texas	-	■	■	■	-
Virginia	■	-	-	-	-
Washington	■	■	■	■	-
Wisconsin	-	■	-	-	-



6. What are the arguments in these legislative proceedings in 2007 and 2008?

- (1) We do not need law. “Self regulatory practices” of the economy – such as the Electronic Product Code Guidelines – are sufficient.
→ **We need legal answers!**
- (2) Law should be general and not refer to one specific technology. Therefore no law for one technology – no “RFID” Law is advisable.
→ **We need law dealing with technologies capable of actively or passively transmitting information!**
- (3) Law should not be premature and should not stymie technological and economical progress.
→ **Law as a prerequisite for qualified discourse!**

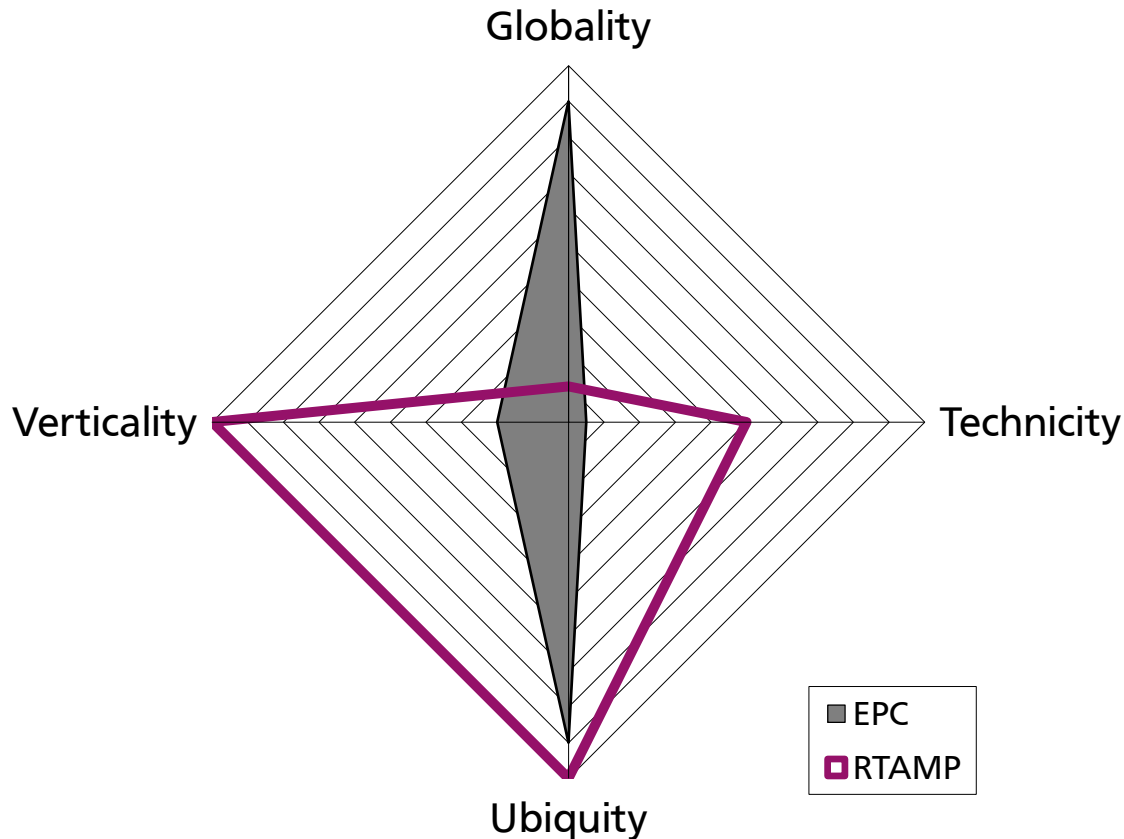
Main Points:

- (1) We need RFID Law – and not only self-controlling policies (e.g. EPC-guidelines)
- (2) We need new Law for the Bag Scenario (duty to information for transmission of non-personal data)
- (3) **Add-on:** The EPC Scenario demands global legal activism

The RTAMP Scenario in the perspective of 2008 is a matter of national sovereignty

7. Your Critique is Input for Me

Add-on: Function of a Radar Chart with the Axes Globality, Verticality, Ubiquity and Technicity?



Globality

How many countries?

Verticality

How long do we use
RFID?

Ubiquity

To what extent are we
surrounded by RFID?

Technicity

How technically
complex is the system?

Outlook: „RFID“ Law in the European Community



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- Right to Know Legislation in Europe (Recommendation)
 - IT Security Legislation in Europe (same Recommendation)
- Present: Online Consultation of the European Commission
http://ec.europa.eu/yourvoice/consultations/index_en.htm

Definition of “RFID” (Art. 2 sec. (c))

"RFID means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it"