

Legal Regulation & Education: Doing the Right Thing?

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A Game of Information: Testing the Limits for Protecting the Integrity of User Data

The increased capabilities of governmental as well as of private entities to monitor, access and manipulate personal data of individuals and groups remain consistently one of the chiefly discussed (under negative light) impacts of digitisation. Information (in all conventional meanings of the term) is as a matter of daily practice being increasingly itemised in the form of easy to manipulate, transfer, store and retrieve electronic data. Where nothing can be simply “forgotten” and where, as the Latin proverb goes, “scripta manent”, communications privacy appears as if becoming a commodity. Someone might reflect on all the unrealised dystopian predictions, which have been looming around ever since the early 80’s about the implications that digital informatisation would have in our social and political lives, to now claim that the true information wars have only just begun; the exaggeration in such a remark could be easily forgiven considering realistically the magnitude and intensity of information processing that new technologies are facilitating; and, most importantly, considering the urgency to mobilise consistent awareness and action in response.

Unfortunately, in the face of serious concerns about practices of mass clandestine surveillance, and without even reaching to that deeper level of discussing critically (and so much more of challenging radically) the terminally self-defeating position into which consistent exercises of such practices are awkwardly delivering liberal democracy and its fundamental values, the institutional grammar which has been reserved for lawyers to frame their responding arsenal appears somehow insufficient. Without devaluing their already demonstrated potential and successes in the arena of legal decision making, terms like “data protection” and “privacy” have been performing as mere legal tropes, attracting concerned lawyers and activists, yet showing little substantial capacity to exceed their institutional limitations and to thus include a wider range of associated meanings in their wording.

For example, one may argue that in the language of modern law, which was practically founded on the notion of property, it is a paradox that individuals’ personal data cannot be claimed as, let’s say, a distinctive formal category of intellectual property, which could be more consistently defended in either public or private matters; in fact, the existing intellectual property law rights, which in theory operate exclusively within a business/commercial context, have on many reported occasions neutralised the fundamental liberties of individuals or groups. The intellectual property rhetoric has grown really strong yet being practised as largely disassociated from possible scenarios where it protects personal information.

The question can be placed within a context where individuals entrust their online identities and activities to large services, such as Google, PayPal, Facebook or Steam. Such service operators may (under conditions frequently placed in the fine print of lengthy Terms of Service) submit to government pressures for disclosing user information or for proceeding into other relevant activity; or they may as well in one or

the other way disconnect individuals from accessing/managing their data. The existing protection forms have certain limits which are being more and more often tested – even considerably threatened.

The presentation picks this as a starting point to explore the dynamics of law and the dead ends within which the latter has been arguably trapped. Our objective is to examine and openly discuss the availability of conceptual margins (that is, beyond the established legal terminologies of practice) for pursuing to secure more effectively the integrity of information in law.