

# PLSC-Europe 2017 Agenda

## Privacy Law Scholars Conference (Europe) 2017

May 17-19, 2017 | Tilburg University, Tilburg, The Netherlands

Held in conjunction with the TILting Perspectives 2017 conference (<http://bit.ly/2qLPbYe>). Please remember that all PLSC participants are asked to have read the papers in advance and to be prepared to comment during the workshops they attend.

### Wednesday, May 17th, 2017

#### 11:50 – 13:20 Workshop Session 1

##### **Family privacy in the internet age: Family photographs as a case study** (PLSC 2; room DZ-7)

By Claire Bessant

Discussants: Eva Lievens and Nicole Moreham

In the modern internet age significant challenges are posed to the privacy of families and individuals. Online sharing of family photographs poses particular challenges, most notably for the children who are often the subject of those photos. Although parental use of social media to share photographs of their children online (known as 'sharenting') has attracted much media comment there has been little academic discussion of the legal ramifications of sharenting. A recent article by Steinberg (2016) provides the first analysis of the impact of sharenting on children's privacy, considering the potential legal solutions in American law. This paper seeks to further develop the discussion started by Steinberg.

##### **Intermediary Publishers and European Data Protection: Searching for Balance?** (PLSC 6; room DZ-6)

By David Erdos

Discussants: Frederik Zuiderveen Borgesius and Bert-Jaap Koops

Online intermediary publishers are not responsible for the original publication of information but are almost always practically critical for freedom of expression online and the legal harms linked to publication. Many of data protection's default provisions—notably the presumption of effective ex ante control and onerous substantive conditions for lawful processing, especially of 'sensitive' data—conflict with freedom of expression. The new freedom of expression clause in the GDPR has a key role to play in reconciling these competing rights

#### 14:20 – 15:50 Workshop Session 2

##### **Unfair Commercial Practices: an alternative approach to privacy protection** (PLSC 1; room DZ-6)

By Nico van Eijk, Chris Hoofnagle and Emilie Kannekens

Discussants: Paul de Hert and Stefano Leucci

We will first set forth how the US addresses privacy issues through application of the FTC's general power to prevent unfair and deceptive trade practices. Developed as a general tool to police business behavior, we explain how the FTC's authorities are applied in the privacy field with two examples. Thereafter, the European framework of unfair commercial practices as set forth in the Unfair Commercial Practices Directive will be discussed. The aim of this contribution is to give a first view of an alternative approach for privacy protection in the EU by an US example and to show that European rules regarding unfair commercial practices can be applied in a manner comparable to the US.

## **Understanding the notion of risk in the GDPR (PLSC 3; room DZ-7)**

By Raphael Gellert

Discussants: Arnold Roosendaal and Magnus Westerlund

The topic of the risk-based approach to data protection has stirred quite some controversy. More in particular, its main criticism argues that it goes directly counter the fundamental right nature of the right to personal data protection and the “rights-based approach” it vehicles, not least because it would offer an uneven level of protection based upon the harms suffered by data subjects. The overall goal of this contribution is to explore the meaning of risk within the GDPR. It will proceed in two steps

## **16:10 – 17:40 Privacy Keynotes (room DZ-2)**

### **Christopher Slobogin: “Policing and the Cloud”**

Christopher Slobogin will discuss law enforcement's burgeoning use of databases maintained by third parties, ranging from internet service providers and commercial establishments to public utilities and other government agencies. Police access to these databases can come in at least five different guises: suspect-driven, profile-driven, event-driven, program-driven, or volunteer-driven. Each of these investigative endeavors are different from the other four. Each calls for a different regulatory regime.

### **Gary T. Marx: “Fake Surveillance, Fake News and Real Surveillance, Real News: Some Thoughts on the rich connections between Tools and Truth”**

Gary T. Marx will offer some conceptual distinctions to help in understanding the relationships between new surveillance and communication technologies as they apply to truth and meaning. While the concepts will be illustrated with examples from current political rhetoric, the issues go much deeper to fundamental questions about the nature of knowledge and truth and how these are discovered and communicated. A related question involves the ironic vulnerabilities and unanticipated (and often even unimagined) consequences of new surveillance and communication tools.

## **Day 2 – Thursday, May 18<sup>th</sup>**

### **9:30 – 11:00 Workshop Session 3**

#### **Privacy spaces (PLSC 4; room DZ-6)**

By Bert-Jaap Koops

Discussants: Norberto Andrade and Maša Galič

This paper proposes a definition of privacy as ‘having spaces in which you can be yourself.’ I will start by defining privacy combining ‘spaces’ and ‘being able to be yourself’, discuss how this definition relates to major conceptualisations of privacy, and the main spaces in which it may be important to be able to be yourself. Finally, I will discuss how framing the problem in spatial terms may help to better understand the challenges, which is a precondition for addressing them.

### **13:50 – 15:20 Workshop Session 4**

#### **“We Only Spy on Foreigners”: The Myth of a Universal Right to Privacy and the Practice of Foreign Mass Surveillance (PLSC 5; room DZ-6)**

By Asaf Lubin

Discussants: Nicholas Gross and Nico van Eijk

The digital age brought with it a new “Pax Technica” where government and industry are “tightly bound” in technological and security arrangements where “our” right to privacy and “theirs” is routinely discerned. In this piece I justify, in a limited sense, certain legal differentiations in treatment between domestic and foreign surveillance. = (1) disparity in the political-jurisdictional reach of state agencies; (2) disparity in the technological reach of state agencies; and (3) disparity in harms from potential abuse of power.

### **Should fundamental rights to privacy and data protection be a part of EU's international trade deals? Dynamic between fundamental rights protecting personal data and international trade law (PLSC 7; room DZ-7)**

By Svetlana Yakovleva

Discussants: Gloria Gonzalez Fuster and Eleni Kosta

This contribution argues that privacy and data protection should be a part of international trade deals of the European Union: economic regulation, which calls for a lower optimal level of protection and a less restrictive model, limiting the regulatory autonomy of the parties to international trade agreements to protect privacy and personal data as fundamental rights. This is unlikely to prevent the subordination of fundamental rights to liberalisation of trade in the context of trade dispute settlement.

## **Day 3 – Friday, May 19<sup>th</sup>**

### **9:45 – 11:15 Workshop Session 5**

#### **Online Price Discrimination and EU Data Privacy Law (PLSC 8; room DZ-6)**

By Frederik Zuiderveen Borgesius and Joost Poort

Discussants: Jakub Harašta and Heleen Janssen

Online shops could offer each website customer a different price. Such personalised pricing can lead to advanced forms of price discrimination based on individual characteristics of consumers. An online shop can recognise customers, for instance through cookies, and categorise them as price-sensitive or price-insensitive. The shop can charge (presumed) price-insensitive people higher prices. This panel discusses such online price discrimination practices from different angles, representing the perspectives of law, economics, ethics, machine learning, regulation and digital civil rights.

### **11:35 – 13:05 Workshop Session 6**

#### **The Privacy Bell: Re-Thinking Privacy Law and Loss (PLSC 9; room DZ-6)**

By Ignacio Cofone and Adriana Robertson

Discussants: Justin Brookman and Clara Marsan-Raventós

The issue of privacy loss is central to privacy law scholarship, yet a clear definition remains lacking. We present a simple model that defines privacy loss in a way that can be applied to policy evaluations. Privacy is defined in view of a subjective standard deviation of a distribution centered around the “true value” of information. The model is discussed using three contemporary issues: Posner's criticism of privacy as an inefficient increase in asymmetric information, common law privacy tort, and the third party doctrine.

## **Transparency and Privacy in Smartphone Eco-systems: A Comparative Perspective** (PLSC 11; room DZ-7)

By Joris Van Hoboken, Ronan Fahy, Nico van Eijk, Ilaria Liccardi and Daniel Weitzner

Discussants: Ronald Leenes and Bart van der Sloot

This paper addresses the question of how transparency requirements in data privacy law map to the smartphone context, looking at the way in which different regulatory environments for data privacy (EU and US) shape transparency about the collection and use of personal data in dominant smartphone ecosystems (Android and Apple iOS). It looks at the different legal requirements and policy guidance as well as the technical implementations shaping transparency in the respective ecosystems.

## **14:05 – 15:35 Workshop Session 7**

### **Can privacy engineering eliminate data subject's rights under the GDPR?** (PLSC 10; room DZ-6)

By Achim Klabunde

Discussants: Natali Helberger and Joris Van Hoboken

This paper explores the assumption that the GDPR introduces an incentive for controllers to circumvent their obligations with regard to the rights of the data subjects, by letting them create processing operations designed to allow the controller to demonstrate that they cannot identify individuals according to Article 11. To this end, the concepts of "data protection by design" and "identifiability" and the interaction between Articles 11 and 25 will be explored and a consistent interpretation of the apparently contradictory provisions of the GDPR will be provided as well as some principles for an engineering approach to DPbD.

### **Towards child-specific privacy impact assessments** (PLSC 12; room DZ-7)

By Milda Macenaite

Discussants: Claire Bessant and Claudia Quelle

The GDPR adopts a risk based approach placing a prominent role on data protection impact assessments (DPIA). General DPIA frameworks are inadequate to fully address the risks to vulnerable data subjects, such as children. This paper argues for a need for a child-specific DPIA framework. It discusses child-specific risks, reviews DPIA methodologies and elaborates a set of child-tailored DPIA criteria that allows the online service providers to more fully understand the child rights impact related to their activities.