

JUR 5630: Privacy, data protection and lex informatica

Lecture and Tutorial Overview, Spring 2010

1st February

Introduction to course. Trends in surveillance and control. Catalysts for emergence of data protection law.

- Technological-organisational developments;
- Public fears;
- Economic factors;
- Legal factors.

- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), chapter 6, sections 6.2–6.4]

[Supplementary reading: Froomkin, “The Death of Privacy?”, *Stanford Law Review*, 2000, vol. 52, pp. 1461–1543; Solove, “Privacy and Power: Computer Databases and Metaphors for Information Privacy”, *Stanford Law Review*, 2001, vol. 53, pp. 1393–1462; Westin, *Privacy and Freedom* (1970)]

4th February

Data protection law in context (I).

- Interrelationship of data protection law with human rights; administrative law; labour law; other legal fields.

- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), chapter 6, section 6.4.1; Bygrave, “Data Protection Pursuant to the Right to Privacy in Human Rights Treaties”, *International Journal of Law & Information Technology*, 1998, vol. 6, pp. 247–284; Bygrave & Aarø, “Privacy, Personality and Publicity – An Overview of Norwegian Law”, in Henry (ed.), *International*

Privacy, Publicity and Personality Laws (2001), pp. 333–346]

[Relevant regulatory instruments: European Convention on Human Rights (1950), especially Art. 8; International Covenant on Civil and Political Rights (1967), especially Art. 17]

8th February

Data protection law in context (II).

- Continuation of lecture of 5th Feb.
- Lee Bygrave

[Required reading: as for previous lecture]

[Regulatory instruments: as for previous lecture]

[Supplementary reading: Bygrave, “International agreements to protect personal data”, in Rule & Greenleaf (eds.), *Global Privacy Protection: The First Generation* (Cheltenham: Edward Elgar, 2008), pp. 15–49]

11th February

Regulatory logic of data protection law (I).

- Field of application
- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), chapters 2, 7]

[Relevant regulatory instruments: Council of Europe’s Convention on data protection (1981); EC Directive on data protection (1995); EC Directive on privacy and electronic communications (2002); Council Framework Decision 2008/977/JHA; Norway’s Personal Data Act (2000); OECD’s Guidelines on data protection (1980); UN’s Guidelines on data protection (1990)]

15th February

Regulatory logic of data protection law (II).

- Core principles
- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits*

(2002), chapters 3, 18–19; Bing, “Data Protection in a Time of Changes”, in Altes *et al.* (eds.), *Information Law Towards the 21st Century* (1992), pp. 247–259]

[Regulatory instruments: as for lecture on 11th Feb.]

18th February

Regulatory logic of data protection law (III).

- Core principles (cont’d)
- Lee Bygrave

[Required reading: as for previous lecture]

[Regulatory instruments: as for lecture on 11th Feb.]

11th March

Regulatory logic of data protection law (IV).

- Oversight and enforcement
- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), chapter 4, pp. 70–79]

[Supplementary reading: Flaherty, *Protecting Privacy in Surveillance Societies* (1989).]

[Regulatory instruments: as for previous lecture on 23rd February]

15th March

Inter-legal aspects of data protection law.

- Regulation of transborder data flow;
- Issues of jurisdiction and applicable law.
- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), pp. 79–83, 223–228; Bygrave, “Determining Applicable Law pursuant to European Data Protection Legislation”, *Computer Law & Security Report* (2000), vol. 16, pp. 252–257; alternatively Bing, “Data protection, jurisdiction and the choice of law”, *Privacy Law & Policy Reporter* (1999), vol. 6, pp. 92–98]

[Supplementary reading: Kuner, *European Data Protection Law: Corporate Compliance and*

Regulation (2007), chapters 3–4; Shaffer, “Globalization and Social Protection: The Impact of E.U. and International Rules in Ratcheting Up of U.S. Privacy Standards”, *Yale Journal of International Law*, 2000, vol. 25, pp. 1–88]

[Relevant regulatory instruments: EC Directive on data protection (1995), Arts 1, 4, 25 & 26; “Safe Harbor” decision of 2000]]

18th March

EU legislation on privacy and e-communications

- E-communications privacy Directive
- Data retention Directive
 - Lee Bygrave

[Relevant regulatory instruments: Directive 2002/58/EC; Directive 2006/24/EC]

22nd March

Data privacy law outside Europe, with particular focus on Asia-Pacific jurisdictions

- USA
- Canada
- Australia
- China
- Harmonisation prospects.
 - Lee Bygrave / Yue Liu

[Required reading: Bygrave, “Privacy Protection in a Global Context – A Comparative Overview”, *Scandinavian Studies in Law*, 2004, vol. 47, pp. 319–348]

[Supplementary reading: Reidenberg, “Resolving Conflicting International Data Privacy Rules in Cyberspace”, *Stanford Law Review*, 2000, vol. 52, pp. 1315–1371; Bennett & Raab, *The Governance of Privacy. Policy instruments in global perspective* (2006).]

25th March

Biometrics

- Development of biometric identification and authentication systems;
- Regulatory framework for such systems.
- Yue Liu

[Supplementary reading: Grijpink, “Privacy Law: Biometrics and Privacy”, *Computer Law & Security Report*, 2001, vol. 17, no. 3, pp. 154–160]

8th April

Tutorial: (i) Scope of “personal data” concept; (ii) Lindqvist decision
- Yue Liu

12th April

Tutorial: (i) Safe Harbor scheme; (ii) APEC Privacy Framework
- Yue Liu

15th April

Tutorial: (i) Google; (ii) Brin & Mayer-Schönberger
- Yue Liu

19th April

Lex informatica and cyberspace (I).

- Emergence and particular regulatory challenges of cyberspace
- Role of information systems architecture in regulating transactional behaviour in cyberspace
- Lee Bygrave

[Required reading: Reidenberg, “Lex Informatica: The Formulation of Information Policy Rules Through Technology”, *Texas Law Review*, 1998, vol. 76, pp. 553ff; Lessig, *Code and Other Laws of Cyberspace* (New York: Basic Books, 1999), chapter 11; Lessig, “The Law of the Horse: What Cyberlaw might Teach”, *Harvard Law Review*, 1999, vol. 113, pp. 501ff]

22nd April

Lex informatica and cyberspace (II).

- Particular challenges to privacy
- The future of privacy?
- Lee Bygrave

[Required reading: Greenleaf, “An Endnote on Regulating Cyberspace: Architecture vs Law?”, *University of New South Wales Law Journal*, 1998,

vol. 21, no. 2; Rotenberg, “Fair Information Practices and the Architecture of Privacy (What Larry Doesn’t Get)”, *Stanford Technology Law Review*, 2001; Burkert, “Privacy-Enhancing Technologies: Typology, Critique, Vision”, in Agre & Rotenberg (eds.), *Technology and Privacy: The New Landscape* (1997), pp. 125–142]

[Supplementary reading: Koops & Leenes, “‘Code’ and the Slow Erosion of Privacy”, *Michigan Telecommunications and Technology Law Review*, 2005, vol. 12, issue 1, pp. 115–188; Bygrave, “Electronic Agents and Privacy: A Cyberspace Odyssey 2001”, *International Journal of Law and Information Technology*, 2001, vol. 9, pp. 275–294, Bygrave, “Digital Rights Management and Privacy – Legal Aspects in the European Union”, in Bekker et al. (eds.), *Digital Rights Management: Technological, Economic, Legal and Political Aspects* (2003), pp. 418–446]