

JUS 5630: Privacy and data protection law

Lecture Overview, Spring 2013

5th February

Introduction to course. Trends in surveillance and control. Catalysts for emergence of data protection law. Short description of privacy and 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), ch. 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)]

7th February

Data protection law in context.

- 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), ch. 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]

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

14th February

Overview of data protection laws, their aims and scope. Data privacy law outside Europe, with particular focus on Asia-Pacific jurisdictions
- Lee Bygrave

[Required reading: Bygrave, “Privacy and Data Protection in an International Perspective”, *Scandinavian Studies in Law*, 2010, vol. 56, pp. 165–200; Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), chs. 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)]

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

28th February

Regulatory logic of data protection law (I).

- Core principles
- Lee Bygrave

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), chs. 3, 18–19; Bagger Tranberg, “Proportionality and data protection in the case law

of the European Court of Justice”, *International Data Privacy Law*, 2011, vol. 1, pp. 239–248]

[Regulatory instruments: as for lecture on 14th Feb.]

7th March

Regulatory logic of data protection law (II).

- Core principles (cont’d)
- Lee Bygrave

[Required reading: as for previous lecture]

[Regulatory instruments: as for lecture on 14th Feb.]

14th March

Regulatory logic of data protection law (III).

- Oversight and enforcement
- Lee Bygrave

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

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

[Regulatory instruments: as for lecture on 14th Feb.]

21st March

EU legislation on privacy and e-communications

- E-communications privacy Directive
- Data retention Directive
- Rozemarijn van der Hilst

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

4th April

Inter-legal aspects of data protection law.

- Regulation of transborder data flow;
- Issues of jurisdiction and applicable law.
- Rozemarijn van der Hilst

[Required reading: Bygrave, *Data Protection Law: Approaching Its Rationale, Logic and Limits* (2002), pp. 79–83; Bygrave, “Determining Applicable Law pursuant to European Data Protection Legislation”, *Computer Law & Security Report* (2000), vol. 16, pp. 252–257; Svantesson, “The regulation of cross-border data flows”,

International Data Privacy Law, 2011, vol. 1, pp. 180–198; Moerel, “The Long Arm of European Data Protection Law”, *International Data Privacy Law* (2011), vol. 1, pp. 28–46; Moerel, “Back to Basics”, *International Data Privacy Law* (2011), vol. 1, pp. 92–110]

[Supplementary reading: Kuner, *European Data Protection Law: Corporate Compliance and Regulation* (2007), chs. 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]]

11th April

Data protection in a counter-terrorism context

- Development of anti-terror security technologies
- Regulatory framework for such systems.
- Rozemarijn van der Hilst

[Supplementary reading: t.b.c.]

12th April

Tutorial: discussion of articles

- Koops & Leenes, “‘Code’ and the Slow Erosion of Privacy”, *Michigan Telecommunications and Technology Law Review*, 2005, vol. 12, pp. 115–188
- Bygrave, ‘The Body as Data? Biobank Regulation via the ‘Back Door’ of Data Protection Law”, *Law, Innovation and Technology*, 2010, vol. 2, pp. 1–25
- Rozemarijn van der Hilst

18th April

Tutorial: discussion of articles

- Kuan Hon, Millard & Walden, “The problem of ‘personal data’ in cloud computing: what information is regulated?—The cloud of unknowing”, *International Data Privacy Law*, 2011, vol. 1, pp. 211–228
- Kuan Hon, Millard & Walden, “Who is responsible for ‘personal data’ in cloud

computing?—The cloud of unknowing, Part 2”, *International Data Privacy Law*, 2012, vol. 2, pp. 3–18

- Tene, “Privacy: The New Generations”, *International Data Privacy Law*, 2011, vol. 1, pp. 15–27
- Rozemarijn van der Hilst