

JUS 5630 / 1630: Privacy and Data Protection Law

Lecture Overview, Spring 2021

27 January

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

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

[Required reading: Bygrave, *Data Privacy Law: An International Perspective* (2014) ch 1]

[Supplementary reading: Zuboff, "Big other: surveillance capitalism and the prospects of an information civilization", *Journal of Information Technology*, 2015, vol. 30, pp. 75–89 (for the longer version, see Zuboff, *The Age of Surveillance Capitalism* (2018); Christl & Spiekermann, *Networks of Control* (2016); Westin, *Privacy and Freedom* (1970)]

10 February

Data protection law in context.

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

[Required reading: Bygrave, *Data Privacy Law: An International Perspective* (2014) ch. 2 (section I); Bygrave, "Data Protection vs. Copyright" in Svantesson & Greenstein (eds.), *Internationalisation of Law in the Digital Information Society* (2013), pp. 55–75]

[Relevant regulatory instruments: Art.8 European Convention on Human Rights (1950); Art. 17 International Covenant on Civil and Political Rights (1967); Arts. 7 and 8 EU Charter of Fundamental Rights (2000)]

17 February

Overview of data protection laws, their aims and scope.

- Remit.
- Field of application.

[Required reading: Voigt & von dem Bussche, *The EU General Data Protection Regulation* (2017) ch. 2 Bygrave, *Data Privacy Law: An International Perspective* (2014) ch. 4]

[Supplementary reading: Lynskey, *The Foundations of EU Data Protection Law* (2015) chs. 2-3]

[Relevant regulatory instruments: EU General Data Protection Regulation (Regulation (EU) 2016/679); EU Law Enforcement Directive (Directive (EU) 2016/680); EU Data Protection Regulation for Union

Institutions (Regulation (EU) 2018/1725); EU Directive on Privacy and Electronic Communications (Directive 2002/58/EC)]

[Other important int'l. regulatory instruments: Council of Europe Convention on data protection (1981; 2018); OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980; 2013); UN Guidelines concerning Computerized Personal Data Files (1990); APEC Privacy Framework (2004)]

[Supplementary reading: Bennett & Raab, *The Governance of Privacy* (2006); Greenleaf, *Asian Data Privacy Laws* (2014); Makulilo (ed.), *African Data Privacy Laws* (2016)]

3 March

Regulatory logic of data protection law (I).

- Core principles.

[Required reading: Voigt & von dem Bussche, *The EU General Data Protection Regulation* (2017) ch. 4 (section 4.1); Bygrave, *Data Privacy Law: An International Perspective* (2014) ch. 5;]

[Supplementary reading: Lynskey, *The Foundations of EU Data Protection Law* (2015) chs. 6-7]

[Regulatory instruments: as for lecture on 17 Feb. but with focus on Art. 5 GDPR]

10 March

Regulatory logic of data protection law (II).

- Core rights and obligations.

[Required reading: Voigt & von dem Bussche, *The EU General Data Protection Regulation* (2017) ch. 5; Bygrave, "Minding the Machine v2.0: The EU General Data Protection Regulation and Automated Decision Making" in Yeung & Lodge (eds.), *Algorithmic Regulation* (2019), pp. 246–260]

[Supplementary reading: Gellert, *The Risk-Based Approach to Data Protection* (2020)]

[Regulatory instruments: Chapt. III GDPR]

17 March

Regulatory logic of data protection law (III).

- Oversight and enforcement.
- Case study on role of DPOs: Kevin McGillivray (DPO, Norwegian Tax Authority).

[Required reading: Voigt & von dem Bussche, *The EU General Data Protection Regulation* (2017) chs. 3, 6–7; Bygrave, *Data Privacy Law: An International Perspective* (2014) ch. 6 (sections A–D) ; Bygrave, "Data Protection by Design and by Default: Deciphering the EU's Legislative Requirements", *Oslo Law Review*, 2017, vol. 4(2), pp. 105–120]

[Supplementary reading: Wright & De Hert (eds.), *Enforcing Privacy: Regulatory, Legal and Technological Approaches* (2016); Flaherty, *Protecting Privacy in Surveillance Societies* (1989)]

[Regulatory instruments: Chs. IV, VI–IX GDPR]

24 March

Inter-legal aspects of data protection law.

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

[Required reading: Voigt & von dem Bussche, *The EU General Data Protection Regulation* (2017) ch. 4 (section 4.3); Bygrave, *Data Privacy Law: An International Perspective* (2014) ch 6 (section E)]

[Supplementary reading: Kuner, “Reality and Illusion in EU Data Transfer Regulation Post Schrems”, *German Law Journal*, 2017, vol. 18(4), pp. 881–918; Svantesson, ‘Extraterritoriality and targeting in EU data privacy law: the weak spot undermining the regulation’, *International Data Privacy Law*, 2015, vol. 5(4), pp. 226–234; Schwartz & Peifer, “Transatlantic Data Privacy”, *Georgetown Law Journal*, 2017, vol. 106, pp. 115–180; Schwartz, “Global Data Privacy: The E.U. Way”, *New York University Law Review*, 2019, vol. 94, p. 771]

[Relevant regulatory instruments: Arts. 3, 41–50 GDPR]

7 April

EU legislation on privacy and e-communications.

- E-Privacy Directive.
- Upcoming E-Privacy Regulation.
- Former Data Retention Directive.

[Required reading: Bygrave, *Data Privacy Law: An International Perspective* (2014) ch 2 (pp. 64–68); Möller Pedersen et al., “Data retention in Europe—the Tele 2 case and beyond”, *International Data Privacy Law*, 2018, vol. 8(2), pp. 160–174]

[Relevant regulatory instruments: Directive 2002/58/EC; Directive 2006/24/EC (annulled); Proposal for ePrivacy Regulation (2017)]

14 April

Data protection law prospects (I).

- Technological challenges (with focus on AI/ADM).
- Case study: Arts. 22 and 25 GDPR.

[Required reading: Bygrave, “Minding the Machine v2.0: The EU General Data Protection Regulation and Automated Decision Making” in Yeung & Lodge (eds.), *Algorithmic Regulation* (2019), pp. 246–260]

[Supplementary reading: Zarsky, “Incompatible: The GDPR in the Age of Big Data”, *Seton Hall Law Review*, 2017, vol. 47, pp. 995-1020; Bygrave, “Machine Learning, Cognitive Sovereignty and Data Protection Rights with Respect to Automated Decisions” in M. Ienca and others (eds.), *The Cambridge Handbook of Life Science, Information Technology and Human Rights* (Cambridge University Press, 2021), forthcoming (available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721118)

21 April

Prospects of data protection law (II).

- Challenges of global interoperability and consensus.
- Other political and legitimacy-related challenges.

[Required reading: Koops, “The trouble with European data protection law”, *International Data Privacy Law*, 2014, vol. 4, pp. 250-261; Bygrave, *Data Privacy Law: An International Perspective* (2014) ch. 7]

[Supplementary reading: Bamberger & Mulligan, *Privacy on the Ground* (2015); Lynskey, *The Foundations of EU Data Protection Law* (2015) ch. 8; Bradford, “The Brussels Effect”, *Northwestern University Law Review*, 2012, vol. 107, pp. 1–67; Bygrave, “The ‘Strasbourg Effect’ on Data Protection in Light of the ‘Brussels Effect’: Logic, Mechanics and Prospects”, *Computer Law & Security Review*, 2021 (in press)]

28 April

From data protection to data ownership: a viable path?

- Data as property.
- Role of IPR in controlling algorithmic regulation.

[Required reading: Purtova, “The Illusion of Personal Data as No-One’s Property”, *Law, Innovation, and Technology*, 2015, vol. 7(1), pp. 83-111; Giulia Schneider, “European Intellectual Property and Data Protection in the Digital-Algorithmic Economy: A Role Reversal?”, *Journal of Intellectual Property Law & Practice*, 2018, vol. 13(3), pp. 229-237]