



Jean Monnet Chair PROTECH

“European Protection Law of Individuals in Relation to New Technologies”

Workshop Series on “Social Networks and Multimedia habitats” a.y. 2019/2020

FRIDAY 16 OCTOBER 2020

ABSTRACTS

MORNING SESSION – 09.30 – 13.30

Online – Google Meet Platform

Panel discussion

Mirko Forti - Research Fellow - Sant’Anna School of Advanced Studies

Migrants and refugees in the cyberspace environment: Privacy concerns and digital identity in the European approach

Migrants and refugees use their smartphones during their migration journey in several ways. They utilize social networks to maintain a bond with families and friends back in the State of origin, to get information about their planned routes, to keep contacts with smugglers and traffickers and as a tool of integration in the national community of intended destination. Although smartphones are a useful tool for their migration plans, these devices could also become a gateway to digital surveillance. This article aims to focus on the relationship between smartphones and migrants and its legal consequences, especially about privacy and data protection concerns. More specifically, the study would like to individuate how the utilization of digital devices in the context of mass migration phenomena could expose migrants and refugees to several threats coming from the cyberspace dimension. Thus, it is fundamental to verify which kind of legal instruments the European regulatory framework could provide to safeguard the right to privacy and data protection of these subjects.

Antonella Correnti - Research Fellow - Messina University

Online market, big data and privacy protection

The digital market and the protection of privacy could not fail to be affected by the effects produced by the indiscriminate use of social networks. The objective value of modern communication tools should not be overstated, the impact should rather be monitored in order not to frustrate its inspirational logic. The coronavirus pandemic has made the need for reflection on the issue even more vivid, being the means of distance communication that have become the exclusive means of social interaction.

Nicoleta Angela Cherciu - Research Fellow - Sant’Anna School of Advanced Studies Teodor Chirvase - LL.M. - Tilburg University

Non-personal data processing. Why we should take it personally?

Data processing technologies have become more pervasive than ever in recent years, making EU citizens subject to profiling and automated decisions. This article aims to address the issues related to the widely ranging interpretations of the notion of personal data, and to evaluate the extent to which the existing regulatory framework in the EU provides adequate safeguards to the protection of individuals’ rights and freedoms in the context of both personal and non-personal data processing operations, identifying the key gaps in the current legal framework

that the European Commission and other relevant bodies will need to address to adequately protect EU consumers.

Aldo Iannotti della Valle - Ph.D. candidate - Suor Orsola Benincasa University

The adequacy of the law to the new technologies in the light of two recent decisions of the Court of Justice of the European Union

The paper starts with the analysis of the two recent decisions of the Court of Justice of the European Union on the Google/CNIL and Facebook cases, also in the light of the GDPR.

The digital revolution is giving one of the greatest transformations to the world since the era of the industrial revolution and is equally aware that we must be ready for the ever-greater penetration of new technologies into our lives. With specific regard to the right to be forgotten, the real problem lies in the fact that personal data become substantially indelible once they have been published online and the only possibility is to think about a possible balance between innovation and the protection of fundamental rights.

For this reason, this paper highlights how both the legislator and the Courts do not pay the due attention to the new technologies behind the law, suggesting a technological approach to law as a way to better protect fundamental rights in the digital age.

Silvia Martinelli - Ph.D. candidate Torino University - Research Fellow Milano University

The vulnerable business user: The asymmetric relationship between the business user and the platform

The Paper analyses the weakness of the business users in multimedia habitat and, in particular, in the platform economy. It underlines the vulnerabilities of business users, unprotected by consumer law and data protection, in a market characterised by strong dominant position, high network effects and high switching costs.

Firstly, it focuses on the governance and regulation power of the platform (and the weaker counter-part bargaining power of the business users) and on the prevision of the measures of suspension and termination of the services by the platform.

Secondly, the paper analyses ranking algorithms regulation and differentiated treatment with regard to the interest of business users.

Finally, it moves to data law and data access for analyse article 9 of the Regulation 1150/2019 and suggests the introduction of further instruments to protect the business user and guarantee, at the same time, some improvement for competition.

Viola Cappelli - Ph.D. candidate - Sant'Anna School of Advanced Studies

The legal qualification of collaborative platforms offering composite services. What consequences for consumer protection?

This paper discusses the legal qualification of collaborative platforms offering composite services, and it aims at identifying a preliminary solution that could ensure a high level of consumer protection to users.

The paper argues that collaborative platforms should be considered providers of information society services according to the E-Commerce Directive, without precluding their classification as offline services providers in light of sector regulations.

Moreover, the paper focuses on contractual liability of platforms for non-performance by offline suppliers. The solution suggested is using the criterion of the decisive influence elaborated by the CJEU in Uber and Airbnb cases to define cases where a platform is obliged to compensate consumers for non-performance.

Chiara Sartoris - Research Fellow - Firenze University

Minors' data protection between e-learning and social network platforms

The paper analyses the impact of Internet on minor's privacy right. It focuses on two aspects. On one hand, the health emergency of the last few months has imposed school to provide smart lessons, which, however, pose new problems of data protection within digital classes. On the other hand, more complex issues are involved when minors use alone social networks. Thus, it is essential to determine which role parents have and in which extent minors are able to express their consent. The purpose of the paper is to show the new emerging challenges in this field, overcoming some difficulties of coordination between the Italian law and the E.U. framework, in order to assure an effective protection to minors in the digital environment.

Valeria Manzo - Ph.D. candidate - Luigi Vanivittelli University

Child protection on social networks in the era of Covid-19 confinement

While it is true that, in the digital age, the child has considerable tools to express his or her personality and exercise the rights recognized by international conventions (also through the use of technologies that allow new models of relationships), the continuous process of renewal of applications inevitably results in a greater concentration of information with consequent exposure to greater risks for security and privacy.

In this context, due to the confinement measures caused by the COVID-19 pandemic emergency, minors have become even more dependent on social media to stay in touch with friends, to express their feelings, to study and to distract themselves.

The objective of this survey is to address the specific issue of children's interactions on social media and the impact in terms of privacy and data protection as, in light of the emergency lockdown confinement, their vulnerability is further increased.

Fabrizia Rosa - Ph.D. candidate - Parthenope University

The use of the it tools and artificial intelligence in the health sector: the patient as a vulnerable subject

The present work aims at analyzing the development of technologies in the healthcare sector and the impact this has had on patients' right to privacy.

After having examined the meaning of "digital health", it focuses on the main tools used nowadays for the processing of patients' data (telemedicine, electronic medical record and electronic health record) and on the risks they entail for the protection of the right to privacy of patients.

Notably, since the processing of data includes personal and health data stored digitally, they are exposed to the possibility to be lost or become inaccessible, violated or stolen, circumstances that can lead to problems both on the individual level regarding privacy violation, and at the collective level, for example preventing the provision of health services.

In conclusion, in order to minimize these risks, it is necessary that digitalization in the health sector will become an organic and safe process and that health data management strategies are envisaged to ensure the protection and availability of data in a reliable and timely manner.

Livia Aulino - Ph.D. candidate - Suor Orsola Benincasa University

Human machine interaction and legal informations in the autonomous vehicles: the opportunity of the legal design

The article deals with the relationship between language and law and then examines the connection between autonomous driving and law. Therefore, the fundamental question includes both what are the best ways of transmitting legal information within autonomous vehicles as well as their correct understanding.

The issue of the lack of clarity of information from the private law point of view will then be addressed, focusing on the issue of error in view of an evolution of the category.

In this context it is considerable of the role of design and in particular of legal design, as a possible remedy to the communication deficit of legal information provided by the vehicle. In fact the solution can be seen in the opportunity to design human machine interfaces, which - also through a signaling acoustic, visual or tactile - provide legal information clearly and unambiguously on the autonomous vehicle. This in order to guarantee a security by design and to ensure support and mutual learning between the machine and the user.

Anna Irene Cesarano - Ph.D. candidate - Suor Orsola Benincasa University

Autonomous driving: an exploratory investigation on public perception

The automotive sector is constantly evolving, self-driving cars are the result of a complex design that adopts a good variety of devices and sensors that capture information from the external environment which is then transmitted to an internal computer, in order to guarantee the vehicle efficiency, safety, stability

My quantitative research has purpose to test the level of knowledge of concepts such as robotaxis, automation, autonomous driving.

The sample is formed by adults (18-65 years old) residing in Campania stratified by age, while the questionnaire is structured with closed questions, including some at the end relevant questions the "Other" option, where the interviewed can freely choose to write their answer on the question submitted. The territorial area is limited to the

Campania provinces as Campania is the region where the doctoral project with an industrial character resides and is a particular topic relevant for this territory as already stated above, therefore the target of the research includes adults from Campania. The method used is the Web Survey through structured questionnaire, as it is impossible to conduct a study today without the aid of digital technologies that facilitate dissemination, collection, analysis and the identification of the target, which in this case also widely includes the so-called "digital natives".

Mario Triggiani - Teaching Assistant - Suor Orsola Benincasa University

The scientific innovations of fetal surgery and artificial womb could innovate also the concept of legal personhood

English law is clear that legal personality is afforded to all persons born alive.

This rule may need to be revised, as technological advances in fetal surgery and artificial womb technology do not appear to be compatible with traditional conceptions of birth and being alive in the law.

Using these technologies it is indeed possible to have an ex utero gestation or a temporary ex utero existence.

If the birth is only the separation between the gestator and the gestational subject, these foetuses could be considered born, and maybe even "born alive".

However, affording them legal personality may have a huge impact on the fundamental rights of pregnant women.

AFTERNOON SESSION – 15.30 – 18.30

Online – Google Meet Platform

Panel discussion

Laura Valle - Professor of Private Law - Bolzano University

Cookies e tutela dei dati personali, discipline a tutela del consumatore e protezione dei diritti della persona

Il ricorso generalizzato all'adozione dei cookies da parte degli operatori che gestiscono siti internet pone importanti questioni rispetto alla disciplina del trattamento dei dati personali alla luce del Reg. 2016/679 UE, in linea con quanto interessava già la precedente disciplina data dalla dir. 96/54 UE. Tanto è stato messo a fuoco in tempi recenti nei quali si sono avute più importanti pronunce giurisprudenziali sia da parte della Corte di giustizia UE sia da parte di giudici nazionali in applicazione della disciplina di tutela dei dati personali data a livello europeo. Nel contempo, le pratiche adottate dagli operatori per la raccolta di dati personali attraverso i cookies si prestano in tanti casi a violare discipline date a tutela dei consumatori, in particolare la disciplina delle pratiche commerciali scorrette e la disciplina delle clausole vessatorie. Rispetto alle pratiche di raccolta dei dati personali attraverso i *cookies* ci si deve anche domandare se esse non si prestino a violare diritti fondamentali della persona come il diritto all'informazione e il diritto all'educazione.

Arndt Künnecke - Professor of Public Law and Politics - Federal University of Applied Sciences for Public Administration in Brühl (Germany)

Distance teaching in times of corona. From zero to hero? Experiences and best practices of a university lecturer trying to create a student-centred distance teaching approach

This article deals with the challenges of distance teaching in times of Corona. As hardly any university teacher was prepared for switching from traditional in-class teaching to distance teaching and as most universities were neither personally nor technically equipped for such a dramatic change, nearly everybody had to start from zero. As university teacher in Germany, I invented my own student-centred method of distance teaching, combining various available means and tools of teaching on distance: Videos, WhatsApp and Zoom – VWZ. This VWZ-approach turned out to be a very promising and effective method of distance teaching. It puts the students in the centre and gives them better control of the learning process as they can work on the learning matters anytime, anywhere, and according to their own learning speed, while the teacher is constantly available for them to provide guidance, answer questions and give them feedback.

Roberta Montinaro - Professor of Private Law - L'Orientale University

Andrea D'Alessio - Ph.D. candidate - Teramo University

Online platforms: new vulnerabilities to be addressed in the European legal framework.

Online Platforms play a significant role in facilitating the exchanges of goods and services, operating as market makers. Their intermediary function is carried out through the stipulation of a series of unilaterally determined contracts, in which even business users have a specific position of vulnerability. Therefore, the need of ensuring the growth of the phenomenon determined the adoption of Reg. (EU) n. 1150/2019, “On promoting fairness and transparency for business users of online intermediation services”. The new legal discipline tries to address business users vulnerabilities concerning asymmetry in knowledge and bargaining power. The paper aims to analyse this legal framework and its problematic aspects.

Antonina Astone - Professor of Private Law - Messina University

Capitalism of digital surveillance and digital disintermediation in the era of the pandemic

The article examines the phenomenon called ‘digital disintermediation’ characterized by a shift of a series of activities from businesses to the population.

The databases, which collect personal information and, more generally, data of both private and public subjects, appear vulnerable to hacker attacks; blockchain technology, which seems to have generated a new climate of trust in the safe use of data, is expression, also of digital disintermediation to which, however, is associated with the risk of an intellectual isolation, known as ‘filter bubbles’.

But the Covid-19 has reversed course. Now more than ever, the ‘social function’ that GDPR 679/2016, in recital 4, assigns to the use of personal data emerges.

The intervention of the public Authorities appears necessary to guarantee a correct exercise in the treatment of the data, in all cases this is urgent or necessary.

Marco Rizzuti - Researcher of Private Law - Firenze University

GDPR and the right to be forgotten

The paper deals with the EU case-law about the right to be forgotten, enshrined also in article 17 of the GDPR, and compares its developments with some trends at domestic level.

Maria Cristina Gaeta - Research Fellow - Suor Orsola Benincasa University

Smart toys and minors’ protection in the context of the internet of everything

Smart toys are devices with the appearance of traditional children’s toys (e.g. dolls or cuddly toys) but they are capable of interacting with the surrounding environment, connecting to the Internet and using technological systems that range from sound systems (e.g. microphones) to visual systems (e.g. cameras), passing through the multiple types of sensors of movement or localisation, with which they are equipped.

They are robots, characterized by a more or less developed level of automation, to the point that the most recent models of connected toys are equipped with artificial intelligence. Smart toys are designed to interact actively with children and are often able to automatically perform various activities, such as recording sounds, taking photos, shooting videos and connecting to websites or social networks.

Although smart toys are fun and sometimes even educational games, they are still tools that collect, process and communicate data and information, with possible risks especially for minors. Indeed, first of all, there is the risk of unlawful processing of minors’ personal data, but also the risk of hacker attacks, problems related to possible emotional ties between the child and the toy, as well as damages arising from a malfunctioning of the smart toy.

This paper will deepen the concept of smart toys, starting from the characteristics and the technical aspects and then moving on to the analysis of their possibilities and risks, in order to identify what could be possible remedies to be foreseen for protecting minors.

Paola Grimaldi - Ph.D. and Teaching Assistant - Suor Orsola Benincasa University

Robot, unaware profiling and the protection of vulnerable users

The massive spread of the Internet, the growing use of social network and the creation of *app* have increased and simplified the activity of unaware profiling of users. The phenomenon becomes much more serious when it affects vulnerable users. The GDPR 679/2016 deals very precisely with the issue of profiling personal data by offering adequate protection in several articles by providing adequate security measures to protect users of new technologies and paying particular attention to vulnerable users.