Beyond Data Protection

Regulating information and protection against risks of the digital society

September 21-22, 2023
Utrecht, The Netherlands

WiFi: Paushuize, password PausHuize Social media hashtag: #BDPC2023

Conference Venue:

Paushuize, Kromme Nieuwegracht 49, 3512 HE Utrecht, The Netherlands

Venue details: https://www.heirloom.nl/en/locations/paushuize/

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Day 1: Thursday, 21 September 2023

Time	Room 1: Beelaerts van Bloklandzaal (1st floor)	Room 2: Luxembourgzaal (attic)	Room 3: 's Jacobzaal (1st floor)
08:30-09:00	Registration & coffee[1]		
09:00-09:15	Welcome from Research Director of Utrecht School of Law Prof. François Kristen & Nadya Purtova		
09:15-10:30	**Keynote #1:** Karen Yeung Moderator: Bryce Newell		
10:30-10:45	Coffee Break (15 min)		
10:45-12:00	**Session 1A:** Emerging Issues in Data Governance	**Session 1B:** Government Data/Surveillance	**Session 1C:** INTERACTIVE SESSION #1: **Workshop** "Exploring 'Data Autonomy'"
12:00-13:00	Lunch	*Space for work and meetings*	*Space for work and meetings*
13:00-14:15	**Keynote #2:** Lokke Moerel Moderator: Bryce Newell		
14:15-14:30	Coffee Break (15 min)	*Space for work and meetings*	*Space for work and meetings*
14:30-15:45	**Session 2A:** Emerging Issues in AI Regulation	**Session 2B:** Political Economy and Data	**Session 2C:** Digital Advertising, Users, and Consent
15:45-16:15	Coffee Break (30 min)	*Space for work and meetings*	*Space for work and meetings*
16:15-17:30	**Roundtable:** Data protection in 2033		
17:30-18:30	Reception		

[1]Coffee, lunch, and drinks will be served in ***de Koninginnekamer***, on the 1st floor.

Day 2: Friday, 22 September 2023

Time	**Room 1: Beelaerts van Bloklandzaal (1st floor)**	**Room 2: Luxembourgzaal (attic)**	**Room 3: 's Jacobzaal (1st floor)**
08:30-09:00	Registration & coffee		
09:00-10:15	**Understanding information for legal protection against information-induced harms** Nadya Purtova Reflections by Mireille Hildebrandt Moderator: Gijs van Maanen		
10:15-10:45	Coffee Break (30 min)	*Space for work and meetings*	*Space for work and meetings*
10:45-12:00	**Session 3A:** Beyond Data Protection	**Session 3B:** International DP and AI Regulation	**Session 3C:** INTERACTIVE SESSION #2: Data to the People
12:00-13:00	Lunch	*Space for work and meetings*	*Space for work and meetings*
13:00-14:15	**Session 4A:** EU Digital Strategy	**Session 4B:** Discrimination and Bias	**Session 4C:** INTERACTIVE SESSION #3: Linked Administrative Data
14:15-14:45	Coffee Break (30 min)	*Space for work and meetings*	*Space for work and meetings*
14:45-16:00	**Keynote #3:** Michael Veale Moderator: Gijs van Maanen		
16:00-17:00	Closing Remarks, Reception		

Session Details

ID	Session Name	Presenters
1A	Emerging Issues in Data Governance *Room 1* Moderated by **Irene Kamara**	**Cyril Fischer** *GDPR in a Metaversal Post-Digital World: the Law of Everything or the Law of Nothing?* **Mara Paun** *Regulatory Disconnection in the GDPR: A look through the Lens based on the Theory of Autopoiesis* **Onntje Hinrichs** *Consumer Law as Second Vantage Point for the Protection of Consumer Data – Protecting or Polluting the Privacy Ecosystem?* **Pietro Dunn** *Hate Speech Moderation and Challenges to Substantive Equality in the Algorithmic Age*
1B	Government Data/ Surveillance *Room 2* Moderated by **Bryce Newell**	**Barbara Lazarotto** *The Smart Government Paradox: A Critical Reflection on EU Constitutional and Data Law Landscape in Light of Techno-Solutionism* **Frederik Zuiderveen Borgesius and Sarah Eskens** *What are the Arguments in Favour of and Against Mass Surveillance by the State?* **Veronika Nagy** *Outsourcing Security Intelligence: The Risks of Data Litter in Migration Control Practices* **Wenxi Zhang, Sharanya Shanmugam, and Jason Grant Allen** *Comparing Data Protection Approaches in Smart Cities: Digital Consent and the Accountability Framework*
1C	INTERACTIVE SESSION #1: Exploring 'Data Autonomy' *Room 3*	**Oskar Gstrein** *Exploring 'Data Autonomy'—Illuminating the Path of the Datafied University* Facilitator: **Oskar J. Gstrein** Speakers: **Kristina Irion** (UVA) and **Wladimir Mufty** (SURF) *This interactive session invites participants to explore the complex interaction between academic freedoms and the affordances of data infrastructures used in education and research, as well as the notions of data sovereignty and data autonomy in academic settings.*

ID	Session Name	Presenters
2A	Emerging Issues in AI Regulation *Room 1* Moderated by **Reuben Binns**	**Alina Wernick** *What Impact Assessments Cannot Do?* **Andrea Wallace** *Problematizing the Public Domain: Emerging Issues for Open GLAM against the Backdrop of AI, Machine Learning and Computational Processing* **Dan Burk *[online]*** *Asemic AI* **Luke Stark** *Conceptual Limits for the Right to a Reasonable Inference in AI/ML Decision-Making*
2B	Political Economy and Data *Room 2* Moderated by **Gijs van Maanen**	**Esra Demir** *Human Biodata Governance: Balancing the Innovation and Protection Dilemma Through Meta-Regulation* **Katherine Nolan** *The Economic Ideology of EU Data Protection Law* **Pia Groenewolt** *Asymmetry of Power of the Data Economy in Food Systems: A Paradox in Regulation* **Tommaso Fia** *'Fairness' in the Data Act: Reshaping the Political Economy of Data Governance in the EU?*
2C	Digital Advertising, Users, and Consent *Room 3* Moderated by **Alessia D'Amico**	**Frederik Zuiderveen Borgesius and Pieter Wolters** *The EU Digital Services Act: What are its Implications for Online Advertising?* **Nataliia Bielova, Cristiana Santos, and Colin M. Gray** *Two Worlds Apart! Closing the Gap between Regulating EU Consent and User Studies* **Timo Mueller-Tribbensee, Bernd Skiera, and Klaus M. Miller** *Pay-or-Consent Walls* **Karlo Lukic** *Privacy Changes in Google Browser Extensions: Reactions from Developers*

ID	Session Name	Presenters
3A	Beyond Data Protection *Room 1* Moderated by **Nikita Divissenko**	**Angelina Fisher and Thomas Streinz** *Regulating Data Differently: Beyond Data as a Regulatory Object* **Beatriz Botero Arcila *[online]*** *Is all Transparency Surveillance? Beyond Data Protection and Transparency in the Governance of Public Records in the Age of Big Data* **Libby Bishop** *Beyond Markets and Commons: Safeguarding Human Dignity in a Datified World* **Libby Young** *A Re-Theory of Personal Data: Governing its Relationality, Reflexivity and Representativeness*
3B	International DP and AI Regulation *Room 2* Moderated by **Katherine Nolan**	**Erica Bakonyi and Nicolo Zingales** *Taking the Right to Compensation for Unlawful Data Processing Seriously: A Brazilian Perspective on the Role of Preventive Third Party Assessments* **Federica Paolucci** *Eurocentric AI: perils and benefits of the Brussels approach toward the Regulation of Artificial Intelligence* **Lola Montero Santos** *The lessons from ecosystems theory for a sound EU Data Regulation that achieves its desired Goals* **Sriram Srikumar** *Invisible Information: What data protection laws cannot see and why that matters*
3C	INTERACTIVE SESSION #2: Data to the People *Room 3*	**Maria Luciano** *Data to the People: Reflecting on Participation and Inclusion in AI Uses for Healthcare* *This interactive session focuses on data governance, or the process of making decisions about how data is collected, structured, processed, used and shared. Participants will reflect on the how? when? and why? of participatory approaches to shape data governance models and help us move towards data justice. We'll use a future scenarios methodology on artificial intelligence in healthcare systems to raise questions on the possibilities and concerns that such use of technology poses to different communities today and could pose in the next ten or fifty years.*

ID	Session Name	Presenters
4A	EU Digital Strategy *Room 1* Moderated by **Gijs van Maanen**	**Alexandre Humain-Lescop** *Help Me to Avoid Taking Care of My Personal Data Myself! Should We Adopt Delegated and/or Collective Approaches?* **Jakub Misek** *Current Case Law of CJEU and its Impact on Open Data* **Maayan Perel, Niva Elkin-Koren, and Aline Iramina** *Paving the Way for the Right to Research Platform Data* **Tamar Sharon and Raphael Gellert** *Sphere Transgressions and the Limits of Europe's Digital Regulatory Strategy*
4B	Discrimination and Bias *Room 2* Moderated by **Tommaso Fia**	**Felix Bieker** *AI Regulation: Potentials Within and Beyond Data Protection* **Ioanna Papageorgiou and Carlos Mougan** *Processing Sensitive Personal Data for Bias Monitoring under the AI Act: Necessity Principle* **Lorenzo Gugliotta** *A Right to Explanation for Automated Systems? Towards Enforceable Explainability Across the GDPR and the AI Act* **Marvin van Bekkum and Frederik Zuiderveen Borgesius** *Discrimination Threats of Data-Driven Decision-Making in Insurance*
4C	INTERACTIVE SESSION #3: Linked Administrative Data *Room 3*	**Kimberlee Weatherall and Libby Young** *Linked Administrative Data for Evidence-Based Policy Making in the Public Interest: A Participatory Workshop on its Risks and Governance* *This interactive workshop session is designed to be highly participatory. We will examine automated fraud detection using linked administrative data (LAD), such as SyRI in the Netherlands and Robodebt in Australia, which has resulted in significant harms, the withdrawal of programmes, and rulings of unlawfulness. The workshop begins with a brief overview of these trends and concepts, with the bulk of the workshop focused on the presentation of two hypotheticals for participant discussion. The facilitators also invite any interested participants to collaborate in a discussion paper informed by the workshop and other work.*

Keynotes

Prof. Karen Yeung

Lost in translation: the troubling logics underpinning the embrace of governmental machine-learning based prediction tools for 'citizen scoring'

The devastating impact resulting from the take-up of automated decision-making systems in the public sector across several jurisdictions, including but not limited to those that rely on machine learning (ML) applications, is undeniable. Amongst the most well-known is the Dutch child benefit scandal, the Australian robo-debt fiasco, and the UK Postmasters Horizon disaster. In this keynote, my concern is not with the harms themselves (which are clearly shocking and self-evident), but with the underlying reasoning and logics that have led to the production of these harms. I will focus on the use of 'predictive analytics' or 'big data analytics, now ubiquitous in retail, entertainment and logistics, that are increasingly common in public sector contexts which claim to estimate an individual's 'risk' of specific behaviours, such as an offender's likelihood to reoffend or the likelihood that a child will be subject to abuse or neglect.

My lecture springs from the premise that the embrace of these data-driven 'citizen scoring' systems is underpinned by a set of *promises, assumptions, beliefs* and *rationalities* (collectively referred to as 'logics') that seek to replicate the success of ML in commercial contexts into the public sector with no regard for the fundamental differences between the two contexts.

I critique three specific claims that have encouraged the adoption of commercial ML techniques by the state: (a) that ML produces more accurate predictions (b) that these predictions offer valuable 'actionable insight' for public authorities, and (c) that 'early intervention' based on such actionable insight is desirable.

I argue that although it may be legitimate for profit-seeking firms to use probabilistic estimates derived from algorithms to inform low-stakes decisions (such as identifying which web-ads to display to users to encourage more clicks), far more significant state interventions such as denying the early release of a prisoner due to their perceived risk of reoffending or taking a child into care identified as 'at risk', cannot be justified on the same terms. Yet, thanks to of the uncritical adoption of commercial ML methods in the public sector, power and authority are being illegitimately, and sometimes unlawfully, redistributed in ways that produce injustice and without public awareness or democratic debate to the detriment of some of the most vulnerable members of society.

Prof. dr. Lokke Moerel

Why GDPR is not fit to regulate the metaverse

Friend and foe agree that privacy and cyber risks vastly exacerbate in the XR experience of the metaverse. To live a digital life, exponentially more and new types of data are collected, digitizing not only behavior but also inner emotions, resulting in deeper profiling and surveillance of users, which already turned current social media into a polarizing force. First experiences with the metaverse further show that security breaches lead to new risks to **safety** of users. Hardware (like head-sets) can be weaponized by bad actors and physically harm users. Sexual harassment is already an issue on current digital platforms, but 'groping' in virtual reality is interpreted by our brains as an actual threat and equally traumatic. In other words, security-by-design must be stretched into a broad assessment of **safety-by-design**.

Because compliance is in the design of new technologies, important design decisions are made by developers. Because so many individuals of so many companies are involved in the development process, the 'problem of the many hands' arises, where nobody ultimately has the overview and feels responsible for the complete end result. This is not without risks; coding carries the power to affect how we perceive the world. Powered by artificial intelligence, digital environments shape themselves, they propel issues to the fore or make them disappear. In short: technology exerts power; that power will only grow with the metaverse and is currently entrusted to those who write the code. We have no time to loose. The world's largest tech companies forecast that they will be able to launch their metaverse consumer products within the next three to five years. Rather than having the societal debate as an afterthought after the metaverse has materialized (and becomes difficult to change), we should get ahead of the game. But how can we ensure that experts, regulators and stakeholders are involved at the front-end of developments, rather than being left with enforcing and litigating privacy issues as a last resort? This keynote discusses the issues that prevent the GDPR from being effective in regulating the metaverse and provides concrete legislative proposals how we can turn the tide.

Dr Michael Veale
Data Protection and Encrypted Computation

Firms controlling significant technological infrastructures are today able to analyse, model and target individuals and communities, while claiming that no personal data ever leaves their devices. They use the language of privacy-enhancing technologies (PETs), but these technologies typically only preserve confidentiality, leaving many other rights, freedoms and ethical issues unaddressed. Data protection both aims to protect many rights and freedoms in a digital age, but itself hooks onto 'personal data' as its material scope, linking the regime intrinsically to issues of confidentiality. In this talk, I'll show the nature of the challenge encrypted computing creates: not that data protection (always) fails to apply, but as currently understood, it fails to apply in a way that meets its original aims of rebalancing power in informationalised societies. Does the rise of encrypted computation mean we should adapt the tools of data protection, or do we need to think beyond it?

Roundtable "Data protection: how to keep it relevant in 2033"

This roundtable will gather experts from law practice and academia to discuss how data protection can stay relevant in 2033. How can legal protection against information harms be made sustainable in view of rapid technological change, such as the rise of ChatGPT and other Large Language Models or quantum computing? The discussion will be informed by the core findings of the ERC INFO-LEG project.

Roundtable participants:

Lokke Moerel
Lilian Edwards
Michael Veale
Lorenzo Dalla Corte

Moderator: Nadya Purtova