

Editors

Bottis M.- Alexandropoulou E. & Iglezakis I.

6th International Conference on Information Law & Ethics

ICIL 2014



Lifting the Barriers to Empower the Future of Information Law & Ethics

30-31 May 2014

University of Macedonia
Thessaloniki, Greece



HELENIC
REPUBLIC
UNIVERSITY
OF MACEDONIA

main sponsor

official website
www.icil.gr

submissions at
submissions@icil.gr

further information
icil2014@uom.gr

organized by



ΠΑΝΗΓΡΟΦΙΑ
Ιατρική, Ριζικοί και Πονηματικοί
INFORMATION
History, Regulation and Culture



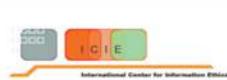
Department of
Applied Informatics
University of Macedonia



ARISTOTLE
UNIVERSITY
OF THESSALONIKI



supported by



Lifting the barriers to empower the future of information law and ethics

Table of contents

Preface	
Eugenia Alexandropoulou-Egyptiadou, Maria Bottis & Ioannis Iglezakis	xv
Introduction / Maria Bottis	xvii
I. Keynotes	
1. Information and democracy: reflections on a complex relationship / <i>Emilios Christodoulides</i>	1
2. IT at the service of citizens and legal professionals' cross-border access to legal means in Europe: The Greek e-justice pilot of European Payment Order / <i>George Pangalos, Ioannis Salmatzidis & Ion Pangalos</i>	13
II. Freedom of information	
1. Freedom of information and democracy: An interdependent relationship and the role that Internet can play / <i>Ioannis Mpoitsis & Nikos Koutsoupias</i>	25
2. Comparative aspects of freedom of information: European Union and member states dimension of open access to public documents / <i>Evangelia Kouidou</i>	44
III. Privacy and Surveillance	
a. Data protection	
1. Rethinking E.U. data protection in the Big Data world / <i>Alessandro Mantelero</i>	56
2. Minor's internet navigation and personal data protection / <i>Eugenia Alexandropoulou-Egyptiadou</i>	74
3. The right to be forgotten in the Google Spain case (case C-131/12): a clear victory for data protection or an obstacle for the internet? / <i>Ioannis Iglezakis</i>	81

4.	The Greek Data Protection Authority and e-governance after the crisis / <i>Helen Rethimiotaki</i>	98
5.	Deep web: A challenge for data protection / <i>Napoleon Xanthoulis</i>	132
6.	Application of data protection concepts to cloud computing / <i>Denitza Toptchiyska</i>	157
b. Surveillance and new technologies		
1.	Privacy in the era of new surveillance technologies: An EU law mission impossible? / <i>Panagiotis Kitsos & Paraskevi Pappa</i>	175
2.	The recommended RFID privacy and data protection impact assessment framework in the EU / <i>Maria Nikita</i>	197
3.	The protection of workers' personal data and the surveillance by RFID / <i>Teresa Coelho Moreira</i>	210
4.	Satellite surveillance and environmental law enforcement in the Brazilian Amazon/ <i>Raoni Rajao & Theo Vurdubakis</i>	221
c. Internet of Things		
1.	Internet of Things (IoT): The colonization of everyday life or a new technological challenge? / <i>Fereniki Panagopoulou-Koutnatzi</i>	243
IV. Intellectual property		
a. Theory		
1.	A bipolar system of copyright in the internet environment / <i>Marinos Papadopoulos</i>	263
2.	Calibrating intellectual property: let's not get lost in metaphysics / <i>Bjorn Coene</i>	278
3.	Lifting the (dogmatic) barriers in intellectual property law / <i>Theodoros Chiou</i>	309
b. ISP liability		
1.	Third party intermediary liability for online copyright infringement: Towards a future European harmonisation / <i>Christina Angelopoulos</i>	334

2.	The intermediary immunity/liability scheme in the US and the EU: The possible impact of the Stop Online Piracy Act (SOPA) / <i>Athanasia Karagkiozaki</i>	356
3.	ISPs and copyright: deep packet inspection and network neutrality / <i>Joan Ramos Toledano</i>	370
c.	Open Access	
1.	Freedom in teaching in the Greek college education: the role of OERs according to academia's perspective / <i>Iliana Araka, Nikos Koutras & Eliza Makridou</i>	387
2.	Open access software usage in public and private institutions: Existing legislation and new challenges in Southeastern Europe / <i>George Skeberis & Nikos Koutsoupias</i>	415
d.	Patents	
1.	Intellectual Property Law and Politics in 20th century Greece/ <i>Stathis Arapostathis</i>	422
2.	Patent litigation in the biosciences: Reconsidering ownership of genetic information after Brüstle and Myriad / <i>Nicola Lucchi</i>	431
3.	Computer patents in Europe and USA: Challenges and management of technological innovation / <i>Chrysi Metallidou</i>	446
e.	Specific copyright issues	
1.	Presenting a historical Treaty: the Marrakesh Treaty on accessible format copies for the visually impaired / <i>Maria Dafni Papadopoulou</i>	461
2.	The film creator's rights in French law / <i>Sofia Gourgoulianni & Xavier Daverat</i>	476
V.	Law and information technology	
1.	3D printing and its regulation dynamics: the world in front of a paradigm shift / <i>Kyriakos Pierrakakis, Miltiadis Kandias, Charitini D. Gritzali, Dimitris Gritzalis</i>	497
2.	Social network teams and community policies v. applicable laws / <i>George Yannopoulos</i>	520

3.	Legal issues of IPv4 to IPv6 transition / <i>Costas Popotas</i>	532
4.	Legal issues of aggregating and curating information flows: The case of RSS protocol / <i>Dimitra Karydi & Ioannis Karydis</i> ...	561
5.	A Greek retrieval system in the legal domain / <i>Apostolis Apostolou, Lilian Mitrou & Theodore Kalamboukis</i>	584
6.	The border control cooperation in the European Union in the perspective of Schengen visa regime / <i>Erlis Hereni & Elton Musa</i>	599
VI. Health law and Bio-law		
1.	Public interest and rights of individuals to health privacy / <i>David Wood & David Frenkel</i>	615
2.	Collecting data for quality improvement and research in Swedish health care and the individual patient's right and ability to protect their privacy / <i>Titti Mattsson</i>	626
3.	Digitalisation and information law as part of the developing global health law system / <i>Atina Krajewska</i>	638
4.	The quality of health services in the European Convention of Oviedo / <i>Theofano Papazissi</i>	668
5.	Traceability as a means in data protection of research biobanks / <i>A. Barmpagalou, M. Manoussos & A. Perdikaris</i>	682
6.	How health policies are re-shaping the character and boundaries of the welfare state in Greece: The paradigm of HIV patients / <i>Chrysoula Kapartziani & Panagiotis Soldatos</i>	688
7.	The privacy of minors within patient-centred e-health systems / <i>Umberto Izzo & Rossana Ducato</i>	711
VII. E-commerce		
1.	International jurisdiction for internet disputes arising out of contractual obligations / <i>Danijela Vrbljanac</i>	725
VIII. E-crime and E - Justice		
1.	“New forms of cyber Attacks” / <i>Philippe Jougleux, Tatiana Synodinou, Lilian Mitrou</i>	753

2. The “C.S.I. Effect”: Legal and ethical issues concerning the impact of televised forensic science on the criminal justice system / <i>Georgia Chadjitheodorou</i>	763
3. A digital quartet for Greek civil proceedings-onwards <i>to e-litigation</i> / <i>Apostolos Anthimos</i>	779

IX. Ethics

1. Defining ‘civil societies’ in the information age: myths and realities in the west and the rest / <i>Aspasia Tsouassis</i>	795
2. Mobile devices, mobile interfaces, mobile implants-mobile ethics? <i>Dionysis Politis, Miltiadis Tsaligopoulos / Georgios Kyriafinis & Alexandros Palaskas</i>	823
3. Parental control and children’s Internet safety: The good, the bad and the ugly / <i>Emmanouil Magkos, Eleni Kleisari, Panagiotis Chanias & Viktor Giakkakouris-Salalidis</i>	829
4. Financial journalism: applying ethics during the challenging era of crisis / <i>Elsa Deliyanni & Theodora Arvanitidou</i>	849
5. Ethics and advertising law in Greece / <i>Mania Tsoumita</i>	867
6. Ethics in the era of e-commerce: The EU approach / <i>Despina Anagnostopoulou</i>	888
7. Autonomous killer robots are probably good news / <i>Vincent Muller & Thomas Simpson</i>	923
8. My avatar and I, <i>Despoina Spatha</i>	935

Lifting barriers to empower the future of information law and ethics-a little introduction

This volume includes the papers of the 6th International Conference on Information law and ethics, held in Thessaloniki, in May 2014. The theme of the conference was “Lifting barriers to empower the future of information law and ethics” and one way or another, we saw many papers aiming at exactly this target, how to best lift barriers to empower this wide discipline’s future.

The main subfields of information law and ethics are, as we know, intellectual property (copyright-patents-trademarks), privacy (data protection, surveillance and related themes) and freedom of information. But the volume also covers areas such as law and information technology, ISP liability, e-commerce and the internet of things. There is also a specific class of papers of information ethics ('mobile' ethics, advertising ethics, journalism ethics etc.). And there is a special part on the intersection of information law with health law, dealing with informed consent, data protection, global health and information law etc – in this one, we added a paper on quality of health care and the Oviedo Convention, for reasons of completeness of this special session at the conference, and this volume as well.

The objective here, as it always has been in this conference, was to develop these subthemes and offer the chance to future researchers to study them and perhaps arrive at deeper conclusions as to the nature of information law and ethics and its future directions. Information is, of course, its unifying theme-not *technology of information*, as some scholars believe it should be, mixing information law with information technology law and failing to understand the supremacy of information as the concept behind this area of law and not any other concept, of a “digital” or electronic nature.

I will refer to very few papers, as this is a little introduction to a very large volume; it is impossible to cover all these wonderful contributions here.

To begin with this wonderful, fascinating but also, some times, elusive concept of information, *Emilios Christodoulides* in this stunning opening paper on information and democracy, the subject of his keynote, eloquently reminds us:

“...something registers as information only if it happens to ‘surprise’ expectations. There is no information without such element of surprise, no information, that is, unless the ‘new’, information-bearing event, grafts itself onto the existing structures of meaning. This grafting underwrites the path-dependency structures of meaning...”

This is why information law and ethics cannot develop unless they are founded upon a solid information theory, a theory which will permit us to understand how information is formed now, what its meaning is and where to it may be heading in the future, due to technological, of course, but certainly *not only technological*, evolutions: these can very well be political, social, economic and so on.

Exactly on this point, very much later in the volume, we read in the impressive article of *Raoni Rajao & Theo Vurdubakis*, on satellite surveillance and environmental law

enforcement in order to save the Brazilian Amazon from still rampant illegal deforestation:

"....Discussions on technology tend to accept the claimed technological potential at face value, and so conflate potentiality with actuality....visibility is better understood as a situated accomplishment. Satellite images, GPS data are assembled, co-ordinated, refracted, interpreted and contested in the course of social, economic and political struggles over what is there 'to be seen' and 'to be believed'...".

This is just another way to express how inadequate the technology of information can be, to serve justice in practice. So one should not rely on the mistaken idea that information law is or ought to be structured around a *technological* concept of information (if one can describe such a concept and simultaneously claim any scientific validity behind it); information law, and ethics, normative as they both are, in their own ways, are interested in harnessing, let's say, information irrespective of *the medium* in which this information may exist or be transferred (electronic, digital, or only *via* human perceptions such as sight, hearing, touch and so on). What surprises us, as true information always does, may very well exist quite apart from the digital world, it may have absolutely no connection with it (if of course we believe that such a world exists in the first place (apart from the physical world, that is, where we live - I think it does not). Gleick's book 'The information: history, theory, the flood', tells us this story perhaps more seductively than anybody else before. And as *Nikita Maria*, one of our best Young Scholars in ICIL notes,

"...it is a common misconception that surveillance and privacy concerns were born on the advent of Information and Communication Technologies. Even if the technologies are new, the privacy fears are not...".

Christodoulides tests the famous relationship between information and democracy and finds it, at times, even antithetical:

"There is no natural correlation between lifting the barriers (to information) and empowering people. Instead, there are key considerations and moves of a strategic nature that in each case decide the optimal balance, so that we are not left with the nonsense of celebrating openness ..in situation ..where syndicalists are granted the right to organize industrial action only when they have taken extensive steps to minimize its impact...".

But this is not the only crucial point in *Christodoulides'* paper: we may already know that in many cases, information about people may make people not act out of fear and this, in its turn, may very well hinder democratic processes. What is novel and very eloquently described is that democracy needs *a certain pace of time* for information to travel and become meaningful for its recipients, so that they can form their own opinions also upon it. And democratic and deliberative political processes have to be slow enough to allow a solid will formation. And in our days, this time and this slowness just does not exist. Our society has proven too dynamic for this end, too quick for its own good. In this sense, the

law that blocks or frees information must be wise enough so as not to lower barriers to information so much so as to lead to the collapse of the political space, as *Christodoulides* so wonderfully explains. Importantly, *Mpoitsis and Koutsoupias* note in their own paper on freedom of information and democracy:

"...most people today are not looking for true information but simply information that confirms their existing perception..." (citing Goldman).

If this is true, time and slowness in the travels of information amongst people are even more important, to allow the possibility that people do not only look to re-confirm but also perhaps change their existing perceptions, if they want, as democracy dictates.

I wonder, though, what *Christodoulides* would comment reading *Mpoitsis and Koutsoupias'* article on democracy, information and the role of the internet, which includes a particularly revealing graph: Much more Russians evaluate a strong economy higher than a good democracy (source: the Pew Research Center):

'Russian citizens consider a very strong economy to be more important than a strong and well-founded democracy'.

Are the Russians right? Could they be wiser than us, and justify this preference reasoning that a very strong economy is indispensable to people's happiness, the final purpose of living, more indispensable than democracy, if it is so? And *Boitsis and Koutsoupias* continue, citing *Walker & Ortung*, noting that the Internet:

'...is a cacophony of many discordant voices-not the best platform for promoting a unified, coherent opposition to the powers that be...internet is also a shelter for many extremist views...it prevents citizens from personal contact with fellow citizens, as in the case of ancient Greek agora...' "

And they complete their thoughts with:

"...internet is an ally for democracy, bringing together millions of people and creating a modern ecclesia in the municipality where views and information change dynamically and without intermediaries, it generates political socialization turning the person to itself and leading this person to lose contact with the opinions of others. But the same could happen if a person reads and is informed by a newspaper or a TV channel. We believe that the Internet does not cause this issue but simply highlights it...."

Naturally, many scholars analyze legal and ethical aspects of information connected to a particular technology. In this sense, any decent book on information law and ethics has to contain a fair amount of this technology-tied view of information and laws. Current breathtaking evolutions of information technology make this absolutely necessary. How can one not marvel at these evolutions when, for example, as we read in *Pangalos, Salmatzidis & Pagkalos* paper on the e-justice pilot of European Payment order:

"...today, through this pilot, Greek lawyers can easily submit and process European Payment Order cases directly to European courts from their offices, using a fully automated, simple and fast procedure.

Lawyers from other piloting European countries can also do the same. All they need is a computer, Internet connection and Communication Technologies can help improve efficiency of cross-border judicial processes, through solutions that ease and facilitate the cross-border case-handling activities..."

And *Kitsos & Papa*, in their paper continue to impress us with what information technology can do:

"...the mere analysis of electricity usage can reveal whether people are away on holiday or at work, when they sleep and awake, whether they watch television or use certain tools or devices, or entertain guests in their free time, how often they do their laundry, if someone uses a specific medical device or a baby-monitor, whether a kidney problem has suddenly appeared or developed over time, if anyone suffers from insomnia, or indeed whether individuals sleep in the same room..."

And they continue to trouble us with what our future wearable watches will contain:

'...sensors that collect in real time information about: the user's body: moods, habits, physical activities, health status, speed, mobility and the user's environment: images, sounds, temperature, humidity, location, social environments as well as computer-generated data to mediate the user's experience of the world around them...'

The Internet of Things is of course another of the most telling examples here. *Panagopoulou-Koutnatzzi*'s article on the Internet of Things is a valuable contribution to this fascinating discussion. She speaks about the Internet of Things as a possible colonization of everyday life, as well as a blessing, which we are not in fact called to halt, but rather to assess and regulate, since it is preferable to regulate rather than demonize things. The greatest biggest fear lies in the risk of actually demolishing the very notion of privacy. People are under perpetual, uncontrolled surveillance that is also unbeknown to them (irrespective of whether it is carried out by private actors or by the state), as there is a lack of sufficient notification directed at users of Internet of Things devices regarding the data recording that takes place. In addition to the above, we are also faced with the emerging issue of the limitation of intellectual privacy, meaning that when a person is perpetually being monitored he is prevented from developing his ideas and thoughts freely. Furthermore, the fear of revealing behavioral patterns through Internet of Things devices should also not be underestimated. On the other hand, according to the author, the Internet of Things is a most promising evolution that will offer us countless abilities and work opportunities. The most important objective in this context is to find ways to protect citizens before all these applications, in their full capacity, will become a reality. If we want this technology to be successful, we must ensure that it will be reliable, controllable and that it will not fall into the wrong hands.

On privacy and data protection, *Titti Mattsson* describes the new regulation in Sweden. A condition for data registration of sick and incapacitated persons is that the person's

attitude as far as possible has been elucidated and there is no reason to believe that he or she would have opposed the registration if he or she had been mentally competent. The author, however, notes that little guidance is offered by the lawmaker to health personnel, as the new law dictates that the scope depend on each individual case (example: a relative has revealed older opposition to data etc). As the author declares, it is at least problematic that the care givers have multiple interests in the management of information about a person but simultaneously, they are to determine whether or not registration of their personal data should be done.

With *Athina Krajewska*'s powerful paper on the intersection of information technology law and global health law, we realize that information law remains within the conception of individual civil and political rights whereas global health is based on a completely different paradigm. The global health discourse revolves around and develops in connection with the right to health and as such it faces problems of enforceability, implementation and effectiveness.

Kpartziani & Soldatos note that the fact that the annual rate of the new seropositives in Greece grew by 57% in just one year coincided with the expiry of the National Action Plan for HIV/AIDS of the Ministry of Health and Solidarity 2008-2012, about the prevention and combating of the sigma, is extremely disappointing and ominous with regard to the effectiveness of the design and the implementation of the National Action Plan. The Directorate-General for Health and Consumer Protection of the European Commission despite its legal obligation to assess the health effects of such financial crises, failed completely to do. Instead, it limited EU commentary to advise about how health ministers should cut their budgets intensifying damage and pain already inflicted. As the authors stress, it should enact the complete opposite rule, via suggesting and initiating an immediate working plan to minimize the ill-effects on vulnerable persons and socially excluded groups in society.

Lastly, I copy from the paper on avatars by one more young scholar, *Despoina Spatha*:

"...inside the information society, developments and digital applications are the piles of online interaction. But such reasoning should not turn the discussion away, under the argument that code is everything. Societies are governed by humans, and so are technological advances and machinery, which operate for the benefit of society...' And she continues:

"...avatars are more than works under copyright law, code and data. They embody the creativity, spirit and the qualitative and quantitative occupation of their users who are closely bonded with their virtual representation. This is the reason why we should think about the attribution of a *sui generis* right to avatars...'.

If ICIL has managed so far to attract papers not only from renowned researchers, very few of whom I mentioned above, but also to offer the stand to young scholars who will develop information law and ethics further, after whatever our contribution may be, then ICIL has achieved its purpose.

Maria Bottis