

COVER PAGE

PEOPLE
MARIE CURIE ACTIONS

Intra-European Fellowships (IEF)
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GODINO

GOVERNING DIGITAL INFORMATION: Users' control and
sovereignty over unpublicized digital information in the European
Union

FINAL REPORT

1. General information

Name of Fellow: Dr. Kristina Irion
Department: Institute for Information Law (IViR), University of Amsterdam
Scientific Supervisor: Prof. Nico van Eijk
Period covered: 01/01/2014 – 31/12/2015
Website: <http://www.ivir.nl/onderzoek/godino>

2. Summary

This research focused on the implications of virtualization and remote computing for individuals' digital records, ie. those information which are not disclosed or shared as user generated content but used to sit on our desktop. The question was answered with a combination of legal analysis and empirical research were whether - taken together - the progressing virtualization and the disruption of physical control produce a backslide for individual positions of rights that is not properly understood. This understanding, however, is crucially needed in order to allow users' interests to be taken fully into account when formulating new policies that would govern retail cloud services.

The overall objectives of the research project were to:

- (a) Investigate the legal treatment of personal records residing on third party equipment;
- (b) Gather evidence on users' attitudes about how personal records are protected as virtual private assets;
- (c) Assess the socio-economic and societal consequences of the transformation against the multidisciplinary rationales for affording legal protection; and
- (d) Address the governance challenge of personal records in order to conceive policy recommendations.

The research achieved to render the anticipated results:

- (a) analysis of the composite effect of the various subject matter laws and the discrepancies of legal protection for information residing on third party equipment from a user perspective;
- (b) assessment of the changes in the legal quality of the protection afforded to individual users and the societal and socio-economic dimension of this transformation;
- (c) conceptual contribution to the governance of individual users' personal records in the cloud; and
- (d) raising public awareness and issue recommendations how to address the governance of individual users' digital records in the cloud.

Specific research outcomes are:

1. Against the backdrop of the transformation of personal record-keeping practices, I argue that the disruption of physical control and cloud services' commercial propositions produce a backslide for individual positions of rights.
2. Sectoral laws applicable to the situation of cloud services produce disparate levels of protection and even gaps where no protection is afforded to personal records.
3. The lacking understanding of the individual dimensions of the ongoing transformation and its socio-economic and societal impact could be misjudged diverting policy makers and stakeholders attention to issues of privacy and security.
4. Individual users' perceptions are geared towards full protection of their personal records in the cloud, not really precise about the legal situation.
5. New draft legislation at EU level addresses some of the contractual shortcomings but fails to propose a level of legal protection that would be adequate to the digital home.

3.1 Highlight clearly significant results

The Fellow is engaged in ongoing high profile and international research valorization:

- Advisory board member to the impact assessment of new legislative proposal of the Audiovisual Media Services Directive (SMART 2015/0048) commissioned by European Commission (DG CONNECT) and executed by Visionary Analytics, Vilnius (LT)
- Panel organiser and chair, “Surveillance Capitalism: A new societal condition rising”, 2016 Computer Privacy and Data Protection (CPDP) International Conference, 28 January 2016, Brussels (BE)
- Member of the Scientific Advisory Board of the 2016 Computer Privacy and Data Protection (CPDP) International Conference, 27-29 January 2016, Brussels (BE)
- Member of the Organization Committee of the 2015 European Communications Research Conference (EuroCPR), 23-24 March 2015, Brussels (BE)
- Panel organizer ‘The myth of users’ empowerment and how future law and policy can be better informed’, European Communication Conference 2014, 12-15/11/2014, Lisbon (PT)
- Panel organizer ‘IViR Panel ‘Privacy by analogy: Lessons from copyright law, environmental law, consumer protection law and financial regulations’, 8th International Conference Computer Privacy & Data Protection (CPDP), 21-23/01/2015, Brussels (BE)
- Member of the programme committee, ‘Under Observation: Synergies, benefits and trade-offs of eHealth and surveillance’, TILTing Perspectives 2015, University of Tilburg, 22-23 April 2015, Tilburg, (NL)
- Member of the scientific committee of the Annual Privacy Forum 2014, Athens (GR)

Publications by the Fellow:

- ‘Your Digital Home is No Longer Your Castle: How Cloud Computing Transforms the (Legal) Relationship between Individuals and Their Personal Records’, (2015) *International Journal of Law and Information Technology* 23(4): 348-371, DOI: 10.1093/ijlit/eav015, available at <<http://ijlit.oxfordjournals.org/content/23/4/348.abstract>>
- “A special regard: The Court of Justice and the fundamental rights to privacy and data protection”, in Faber et al (eds.) *Festschrift fur Wolfhard Kohle* (Baden-Baden: Nomos, forthcoming 2016)
- (with N. van Eijk et al), “The march of smart TV and the search for smart(er) regulation”, *IRIS Special* (Audiovisual Media Observatory: Strasbourg, 2016)
- (with P. Cavaliere, and D. Pavli). *Comparative study of best European practices of online content regulation*. Study commissioned by the Council of Europe, Amsterdam/Edinburgh/Tirana, August, 2015, available at <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168047080a>>
- (with L. Morganti and A. Renda, eds.), Special issue “New intermediaries in the hyperconnected society”, (2015) *Info* 6
- (with L. Morganti and A. Renda), “Guest editorial: New intermediaries in the hyperconnected society” (2015), *Info* 6: 3-7
- (with S.J. Eskens , M.-P. Granger), “Annotatie bij Hof van Justitie EU 8 april 2014 (Digital Rights Ireland / Ierse Ministers en Attorney General”, (2015) *Mediaforum* 3:112-117
- (with M.-P. Granger), ‘The Court of Justice and The Data Retention Directive - Telling Off The EU Legislator and Teaching a Lesson in Privacy and Data Protection’ (2014) *European Law Review* 6, 835-850
- ‘Accountability unchained: Bulk Data Retention, Preemptive Surveillance, and Transatlantic Data Protection’ in: M. Rotenberg, J. Horwitz, and J. Scott, eds., *Visions of Privacy in a Modern Age*, New York: New Press, 2015), 78-92

- (with P. Valcke), ‘Cultural diversity in the digital age: EU competences, policies and regulations for diverse audio-visual and online content’ in: E. Psychogiopoulou, ed., *Cultural Governance and the European Union* (Hounds Mills and New York: Palgrave Macmillan, 2015), 75-90

3. Additional information

Media coverage:

- Lance Farrell, “Losing your rights in a legal cloud”, ScienceNode, 9 November 2015, available at <<https://scienzenode.org/feature/losing-your-rights-in-a-legal-cloud.php>>

Outreach activities:

- K. Irion, “Cloud services made in Europe after Snowden and Schrems”. Op-ed in Internet Policy Review, 25 October 2015, available at <<http://policyreview.info/articles/news/cloud-services-made-europe-after-snowden-and-schrems/377>>
- K. Irion. “Venture into Privacy Law”. Synergies. *Journal of the European Law Students Association* 1/2015: 28-31
- Newsletter University of Amsterdam Faculty of Law of 7 January 2014 announcing Marie Curie Fellowship
- B. Bodo, K. Irion and T. Margoni (2014). “Marie Curie Fellows @ IViR: 25 years of research excellence attract more talents”. *Arils Research Newsletter* of the University of Amsterdam. 15 September 2014

Amsterdam, 29 February 2016