Between public and personal information - not prohibited, therefore permitted?

Kainu M.A. Ville, LLM student, Faculty of Law, University of Turku.
M.Sc. student, Turku School of Economics of University of Turku.
Finland

Koskinen Jani S S, M.Sc., PhD student, Information System Science,
Turku School of Economics, University of Turku. Finland

Abstract:

The right to privacy is an extension of the right to one's own person and human dignity. As a result of known profit seeking corporate behaviour enabled by information technology this right is undermined. This behaviour is legal in most jurisdictions. This paper argues that the regulatory response should be to expand the sphere of privacy in order to meet the ethical criteria of well-justified law.

Alarmingly, there are many ethical problems concerning digital information and privacy without breaking any law. Many corporations claim the rights to information that users input or upload to their systems. The main purpose of corporations is to create profit for shareholders, which drives them to exploit the user information.

The Grey Area exists between the legally set limits of spheres of private and public information regarding an individual. The limits are permeable, but noticeably in only one direction, from private to grey area or even public information. The individual is enticed to make their private information enter the grey area without full understanding of the implications. The service provider may and have used such information in conduct of their business without the user fully realizing the extent of such exploitation.

This paper proposes that the correct response, vis-a-vis Habermas, is to expand the sphere of privacy to minimize the grey area. The proposed solution is to grant the individual Datenherrschaft (mastery over information) over their private information. Thus it is the individual, not the service provider, who retains the mastery over their own information.

Key words: Privacy, Information ethic, Law, Habermass, Datenherrschaft

1 Introduction

Information ethics is the area of research which comprises the disciplines of applied ethics, intellectual property, privacy, free speech, and societal control of information, areas what development of information technology brought up [Moore & Unsworth, 2005]. This article is focused on information ethics, on legal protection of individual privacy and its benefits, which are ethically good position and, surprisingly, even economic advantages, compared to current situation. There has been strong academic interest for the intellectual property rights (IPR) and there has been criticism towards current IPR legislation [see e.g. Cohen, 2001, Moore, 2003, Kimppa, 2004, Boyle, 2008, Fagundes, 2009 etc.]. From this point paper is expanding criticism and brings the Habermasian discourse under evaluation as a promising way to regulate area of privacy and IPR.

Presently the right to privacy is being eroded not solely by state agents or libellous slanderers, but also by individuals themselves as consumers. This paper argues, as elaborated by Cohen [Cohen, 2008] that consumers are being enticed in an ethically disagreeable but legal manner to share information about themselves that would fall under the right to privacy if they did not disclose said information.

However, the walls that protect privacy are permeable, but only in one direction: once private information has been disclosed or exposed, an individual cannot exert control over this information [Cohen, 2008]. Disclosed information is not necessarily the same as published information. An individual generally realizes they are about to publish information before doing so, though the case of social media does make this debatable. [Cohen, 2001.] This paper argues that some individuals who disclose their personal information to service providers do not sufficiently comprehend the implications and consequences of their acts in the Habermasian sense of sufficient.

This paper argues that the current right to privacy regimes do not extend appropriate protection to individuals in light of the understanding about digital space individuals have. Since disclosed information is, under current right to privacy regimes, outside an individual's sphere of control, a solution would be to, firstly, duplicate the Swiss legal instrument of Datenherrschaft so that individuals have mastery over their personal information and, secondly, to create robust property rights, which would enable the individuals to make the decision whether to lease or license the right to use their private information. While this may seem to lead to further commodification of individuals, it should be kept in mind that currently, great profits are reaped from the use of personal information of individuals without their awareness or proper consent.

This paper is working on level of concept. As datenherrschaft has not actually been implemented anywhere, it is impossible to provide any empirical data as to its effects. This paper considers the current state of things as a true experiment on what happens under the current regime of privacy rights and IPR, and argues that datenherrschaft is more likely to bring about a positive than negative change. Due to the broad scope and multidisciplinary approach the concepts cannot be fully developed within the confines of this paper, e.g. more detailed ethical justification is needed. Likewise, before datenherrschaft could be implemented, it would have to be developed further. However, this paper as is contributes to the rational discourse on privacy and IPR. These limitations pose immediate new avenues of inquiry.

2. Background

It is the position of this paper that that human dignity should, to a large extent, prevail over corporate profits. That this may lead to aggregate utility losses in the sense of mainstream (i.e. Chicago school) econometrical approach is not disputed. As can be seen in case law from ECJ, basic rights as outlined in Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU) have prevailed over the four (economic) freedoms of the European Union in some cases resulting on restriction or a temporary complete limitation of these economic freedoms [ECJ cases Omega Spielhallen—und Automatenaufstellungs—GmbH v Oberbürger-meisterin der Bundesstadt Bonn [2004] ECR I-9609 and Eugen Schmidberger, Internationale Transporte und Planzüge v Austria [2003] ECR I-5659].The authors of this paper assert that ethical considerations should always take precedence over economic outcomes. The economic and the ethical are not necessarily mutually exclusive, but the ethical assessment must be made prior to economic decision-making.

2.1 Habermasian rational discourse and current IPR regimes

Problems concerning current immaterial property legislation and lack of individual privacy, which are pointed in this paper, prove the need for new regulation of sphere. Habermasian [Habermas, 1992] discourse demands that subjects of legislation, e.g. citizens, corporations, NGOs, etc., can take part in rational discourse. Strategic game is not allowed because it lacks rationality. Rational discourse is of course an ideal, but it seems trivial to note that there can be degrees of implementation of it. As shown by Cohen and others, [see e.g. Cohen, 2001, Moore, 2003, Kimppa, 2004, Boyle, 2008, Fagundes, 2009 etc.] current legislation of IPR has come about as a result of a process that can be accurately called strategic game. The interests of citizens, educational systems and libraries have not been properly taken into account. This is a problem with the limitations and erosion of public domain.

This paper asserts that, to progress towards rational discourse in legislation process, the legislation process has to first be seen encompassing both earlier and later stages than the traditional view holds. First, in this concept, ethics can inform us of a desirable state towards which the society ought to be steered. Second, wide range of expertise, is to be employed to engineer a law that, according to our best knowledge, should have the least negative consequences while being effective in attaining the desirable goal. Third, after the law is implemented, social sciences must then be employed so that we know how the society has changed and why. Finally, ethics must then be applied again to evaluate the consequences as a whole. Traditionally, the emphasis has been on the second phase and multidisciplinary approach has had a lesser impact.

All the stages should be subject to open discussion in the society, with all the parties in society having access to the discussion. In Habermasian rational discourse, every subject of legislation must come to understand the implications of the proposed legislation before they can agree on it, and rational discourse also requires a consensus on the legislation before implementation.[Habermas, 1992]

Likewise Cohen [Cohen, 2001] stated, IPR-legislation seemed to be moving towards more controlled, corporate-centric and restrictive for individuals free information access. It seems that Cohen was right and the legislation has progressed towards direction that was not seen as desirable [see Cohen, 2008 & Boyle, 2008].

2.2 Rational law-making?

As Boyle shows, EU database directive was ostensibly implemented to stimulate database creation and economic activity dependent on databases. However, when the directive's effectiveness was under review, the directive was found to have stifled instead of stimulated database creation. Markedly, the corporations in database business were asked whether they would prefer to keep databases under copyright protection or not, and the Commission refrained from revising the legislation, even though its own economic study showed results contrary to the original goals of the directive. [Boyle, 2008] This is a clear example of regulatory capture and in this case, both the ethical and the economic test are failed.

This paper subscribes to critical positivist, instrumentalist concept of law. This concept attempts to overcome the problems in Hart and Kelsen by adopting ideas from Ewald and Habermas [Tuori, 2000]. The core idea is to subject the formally correct positive law to external and intersubjectual review [Tuori, 2000].

This paper asserts that applying the social sciences to gain knowledge of the actual reality and then evaluating the state of this reality through ethical analysis would constitute a practical and valid method of critiquing the 'ethical justification' of laws. Obviously ethical analysis must be realized through different prevailing ethical theories. Later in this paper Kant and Locke are used to justify Datenherrschaft, which is proposed as an acceptable solution to the problems outlined in this paper.

3. Information and lack of citizens' privacy in information society.

Information technology has changed how information can be stored, used, share or removed. In pre-computing era information was written on paper, which was simpler and explicit. Information was on physical paper and thus it was clear that if someone wanted it, information was copied on to another paper or it was memorized. Procedure for protecting private information was straightforward; just keep the paper from away from others.

But nowadays information technology has made it possible to store information in different formats and places; you can keep documents on your own computer or memory storage, store it to cloud or keep it in some other recording format and place. Also information about people is collected without people necessarily acknowledging it. At any rate, understanding what happens to that information about people, is inadequate for many people.

A citizen, when disclosing some information about themselves, or uploading content about themselves, may be under the impression that they can later on exert some control over this information. however, as Cohen points out this is not the case – even content of highly private nature escapes from the citizen's sphere of control, as they do not have the power to mandate what, how, when or where it is used, reproduced or altered after the initial self-exposure has taken place. [Cohen, 2008.]

For example, under Finnish law, an individual's right to privacy does not apply to information that is already public. Additionally, if the person in question is someone who is publicly known, they cannot reasonably expect to enjoy a level of privacy a 'John Doe' can. (KKO:2011:72) This ruling is in accord with the European Court of Human Rights rulings in the cases Hachette Filipacchi Associés ("Ici Paris") v. France 23.7.2009 and Mosley v. the United Kingdom 10.5.2011.

Even there are laws about individual privacy and regulation gives protection for privacy, only guaranteed way to individual protect own privacy is to limit information distribution especially on internet. Discussion of the legal limits of speech and privacy is outside the scope of this paper.

3.1 Implications of information collection

The problem is people's limited understanding about consequences of spreading out information in modern society. Companies have the possibility to collect, disseminate and compile information about and from people. It has changed relationship between customers and companies by empowering companies with data collection method at the expense of consumers privacy [Pollach, 2005].

When situation is such that individuals do not have awareness how information, which was thought to be private, actually is used, ethical dilemma occurs. Even if law provides to use that information by consent of individual, example by using End User License Agreement (EULA), it does not remove the ethical problem. This information, used by corporations, is seen as legal property of corporations and hence protection of peoples' privacy is neglected [Bergelson, 2003]. The situation where people, without proper understanding, can permanently lose rights to their personal information is unfair and obscure. Actually, by using deliberately confusing and difficult expression when asking consent of people to use information is ethically blameworthy. Intentional misleading cannot be justified ethically, actually it is aggravating circumstance. And it can be stated that uncomprehending state of people is de facto purpose of corporations.

3.2 Transfer of information as property, source of inequality

Current situation is such that legal and practical position between citizens and corporations is unbalanced and unfair. Laws are constructed such a way that they are mainly protecting interests of corporations, not individuals. Contracts and contract law are sufficiently complex that an individual without the benefit of legal training or very specific practical experience has very real obstacles to their reaching a genuine understanding of their rights and obligations *in toto*. If torts are included in the analysis, the situation is further obfuscated. Lawyers have a reputation of being costly to retain, which further exacerbates the stratification in awareness of one's legal position between corporations and citizens.

Notable is that it seems that in current legislation, that persona information is almost always flowing from individual citizen and in many cases the information is in some point altered to be corporate intellectual property. It is barely the exception that proves the rule if information, even individual origin, if corporate property is transferred to individual possession. This movement of information ownership needs more detailed understanding of area where information is. Hence, those areas are next presented and some characteristic of areas are brought out.

3.3 Private sphere

In this paper is argued that private Information can be private in digital world if and only if it has not published on the internet at all. Private information of citizens is private until one self-exposing in some other domain, even that domain to pose it is not unambiguously public. As cases Hachette Filipacchi Associés ("Ici Paris") v. France 23.7.2009 and Mosley v. the United Kingdom 10.5.2011

show, exposed information is no longer private. It is clear that this private sphere is so limited and vulnerable that it should be under special protection in digital realm as well as physical world.

3.4 Public domain

Public domain is not clear or unambiguously defined Cohen [Cohen, 2006]. In this paper public domain is understood as place where all information published is freely accessible for all interest groups. Such places are public discussion forums, web-pages and etc. A more traditional definition of public domain is used by Boyle when he outlines the piecemeal enclosure of the public domain via computers that have the power to turn unpatentable ideas into patentable machines [Boyle, 2008].

A major problem is that in many occasions arena where information is distributed appears to be public domain or place but actually is the grey area where individuals have considerable difficulty gaining a correct understanding of the information's ownership. Problem is that even information seems as public it can be owned by service provider and thus possibly, and usually, is property of service provider.

3.5 Grey Area and property of corporate

This paper defines as a 'Grey area' a place in digital realm that can seem to be private or public, but actually information that enters it becomes corporate property. There are numerous examples on internet about this kind of places where people can share their information and still not be truly public but are not private either. These kinds of places are closed discussion forums, social media communities where you can choose people to be contact with and etc. There has been shown that even private profiles in Social media are compromised by affiliations with public groups and links with other people [Zheleva & Getoor, 2009].

One current example about service in grey area is Google Drive:

> 'When you upload or otherwise submit content to our Services, you give Google (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones. This license continues even if you stop using our Services (for example, for a business listing you have added to Google Maps)' [Google, 2012]

The Google takes all the property rights of uploaded or submitted material on Google drive. At the same time Google is advertising service as easy way to store and share your information (Actually Google's information, not individual's information anymore). This paper claims that people do not understand the implications when they store information on service such Google Drive.

3.6 Corporate property

An interesting property of corporate information is that it can, as discussed in Cohen [Cohen, 2001] and Boyle [Boyle, 2008], be made into intellectual property protected by copyright or patent. In addition, another corporation cannot legally exploit illegally procured trade secrets. By utilizing various non-disclosure agreements and clauses a corporation can exert considerable control over information flows to competition and consumers, in the case of copyright even to the particularly interesting extent of having the option of filing a case against a party that publishes information the corporation has turned into immaterial property [Cohen, 2001]. This legal option has materialized in successful attempts at curtailing entertainment criticism [Cohen, 2001].
Comparing the private sphere with the sphere of corporate property, it is immediately obvious that individuals lack mastery over information about themselves, especially so in the digital realm. Whereas corporations can and do employ legal expertise to stay informed about their legal position, it is not practical for the individual to do so.

4. Some ethical arguments derived from Locke and Kant

Locke is usually used to justify intellectual property [see e.g. Hughes, 1988, Spinello, 2003]. Hughes presents the idea that Locke meant that personhood is inalienable [Hughes, 1988]. However, while looking at individuals personal information which is turned to be corporates property this personhood is alienated. Personal information is turned into corporation's property which is used to benefit corporate interests. Hence, at least exploitation of information, which was meant to be private, about individuals is conflicting with Locke's idea that one's person is one's property and no one else has right to it but himself [TTG II, V, 27]. Hence, if that personal information is owned by a corporation, it can be said that that person is alienated from his private information which obviously is problematic, and not justified by Locke.

If Locke is used as justifying intellectual property it is clear that it cannot be implied on cases of individual's personal information. Aggravating is that there usually in no informed consent of individual, when property rights are moved from people to corporate.

When people are unaware about consequences of giving rights to personal information there is ethical problem. Formerly information which was one's personal information can be now transformed into corporate property and usually without decent understanding of other part of contract.

If we are looking Kant's second imperative, we see harsh lack of respect of individual benefit and rights on these aforementioned contracts between people and corporations. Kantian second imperative demands that: 'Act in such a way as to treat humanity, whether in your own person or in that of anyone else, always as an end and never merely as a means' [Kant, 1785]. If the stronger party uses that advantage for his own benefit there is collision with second imperative. When one of the contract parties is not on the same level of understanding of consequences nor possess same legislation knowledge as the other and this is used by stronger and for his own benefit, there is situation where weaker party is used merely as a means only and not as end in himself.

Also the Kant's [Kant, 1785] First categorical imperative 'Act as though the maxim of your action were to become, through your will, a universal law of nature' and Third categorical imperative 'Act only so that your will could regard itself as giving universal law through its maxim.' shows the

problem. Exploitation of weaker part cannot be seen as universal law, not as a universal law of one's will or not by through its maxim.

This paper asserts that current situation in 'economic world' is such that people are seen as objects of resource pool and their value , if any, is only financial. Human rights and values are only circumstances which come from the outside of economic world and are usually seen as a disturbance by the actors of the economic sphere. This is highly problematic from liberalist position, to which Kant and Locke belong, where people are seen to be intellectual actors which should have rights to privacy and possess freedom of their own. But in context of property, especially immaterial property, individual's rights seem to be secondary to corporate's right for profit.

Problem is, like Taylor [Taylor, 2004] describes it, people are treated as animals and there is conception of Exploitation Maxim . And if we are thinking world where Exploitation Maxim is universal law or analyse the maxim we see harsh collision between that exploitation maxim and Kant's Categorical imperatives whilst people are seen as source of profit for corporate.

Aforementioned issues demonstrate the problem of economical world, especially on internet where people sunk under the mass, that human value is nothing precious. Individual, or actually information of individual, is worth only its financial value and nothing more when golden goal is to make profit much as possible.

5. Datenherrschaft

This paper argues that datenherrschaft is a workable solution to improving individual's right to privacy and position in information society. By implementing datenherrschaft, grey area can be limited and even, in an extreme case, eliminated if individuals were to decide to withdraw private information (information which is private by nature, even if not currently legally private in all jurisdictions). Habermasian discourse is needed to achieve a shared understanding of problems in current legislation and this paper argues that datenherrschaft is a rational and ethically acceptable means to ensure protection for individual privacy and control of private life.

5.1 Datenherrschaft

The German word die Herrschaft means 'mastery over a thing' in the sense of having absolute or at least overwhelming power over the thing, not necessarily in the sense of having any particular skill, unlike the English translation implies. It is used e.g. German criminal law in conjunction with täter, forming the compound word täterschaft. (§ 25 Abs. 1 1-2. Alt Strafgeseztbuch) Täterschaft means perpetrator-ship of a criminal deed and tätherrschaft is the mastery over the actions (that is, the power to choose to act in this or that manner in the circumstances in which the act took place) taken that the täter has. Datenherrschaft is a term that is used the the Swiss Landesrecht in SR 420.31 Art 8 and SR431.112 Art. 12 to mean mastery a public official has over the information in data protection regarding a public database.

A literal translation of die Datenherrschaft would be 'possession of and mastery over data (information).' As this expression seems imprecise, indeed, mastery over information is specifically used in other discourses to imply the ability to skilfully make use of data, this paper introduces datenherrschaft (sic) as an anglisation of the German word. This term is defined in this paper to mean

> 'the legal right to decide the uses of, and continuing existence of, in a database or another compilation, collection or other container or form of data, over a entry, data point or points or any other expression or form of information that an entity has, regardless of whether they possess said information, with the assumption that sufficient access to justice is implemented for a citizen to have this power upheld in a court of law.'

Datenherrschaft is not widely in use. Thus the word is 'free,' and can be used without confusion of terms. As such a right does not yet exist, it seems logical to adopt a new term. In a sense, right of publicity is similar, but not exactly the same, as it only concerns public use of certain data. As such, using 'right of publicity' or 'right to privacy' or 'copyright over one's private information' would be either inaccurate, unclear, or would obfuscate the issues. It is also conceivable that the word might serve as a tool in discourse.

The new European Commission proposal for reform of the 1995 data protection rules states that it has a considerable human rights impact, and contains the following summary:

> 'The right to protection of personal data is established by Article 8 of the Charter and Article 16 TFEU and in Article 8 of the ECHR. As underlined by the Court of Justice of the EU (Court of Justice of the EU, judgment of 9.11.2010, Joined Cases C-92/09 and C-93/09 Volker und Markus Schecke and Eifert [2010] ECR I-0000.), the right to the protection of personal data is not an absolute right, but must be considered in relation to its function in society. Data protection is closely linked to respect for private and family life protected by Article 7 of the Charter. This is reflected by Article 1(1) of Directive 95/46/EC which provides that Member States shall protect fundamental rights and freedoms of natural persons and in particular their right to privacy with respect of the processing of personal data.' (European Commission Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) 2012/0011 (COD))

Section 3, Art. 17 of this proposal would grant data subjects

> '– – the right to obtain from the controller the erasure of personal data relating to them and the abstention from further dissemination of such data, especially in relation to personal data which are made available by the data subject while he or she was a child – – (c) the data subject objects to the processing of personal data pursuant to Article 19'

Article 19 provides four grounds for objecting to the processing of personal data: where the data is processed for marketing purposes, the right to object shall be explicitly offered to the subject. If the data is processed to protect the vital interests of the data subject or the data is being processed to perform a task carried out in public interest of in exercise of official authority, the subject has the right to object to the processing, unless the controller can show compelling legitimate grounds for the processing which override the right of the subject. If the processing is necessary for the

purposes of the legitimate interests pursued by a controller, the fundamental rights of the data subject will be weighed against these legitimate interests.

What the Commission's proposal does is propose a right very much like the classical negative human rights – rights to be free from state coercion etc. However, given that there has been a second and a third wave of human rights, it does not seem impossible to formulate a positive right. This is what this paper attempts with datenherrschaft.

The parties generally arguing for maximalist IPR regime will no doubt point out the fact that the profits of many businesses would take a hit if they had to pay for the personal information of natural persons, when their use of this data does nothing to exclude others from using this data. That these parties reject identical logic in their defence of their own IP portfolios against private copying of e.g. mp3 files would seem to corroborate the conclusions of Boyle. [Boyle, 2008] This paper will next discuss the economic impact of datenherrschaft and argue that, even according to mainstream economics, datenherrschaft is at worst neutral and at best a beneficial legal instrument.

5.2 The economics of datenherrschaft

Authors reject neo-classical economic theory as the sole or even primary basis for legislation, but even if it was accepted, datenherrschaft would be justified by it. According to the Coase Theorem and the new institutional school of economics that has sprung up around his work, robust property rights ensure that immaterial property rights are put to optimal use [Medema & Mercuro 2006]. If natural persons were granted datenherrschaft, they would be able to lease the use of their personal data to the highest bidder, ensuring that this data would be put to optimal use. This is the first economical argument under mainstream economics for datenherrschaft: similarly to patents and copyright, it would stimulate innovation.

In mainstream economics, externalities are the effects of (mainly corporate) activity that are not factored into the market prices of its products. In order for the market to allocate resources effectively, goes the theory, the externalities must be internalized into the prices. Otherwise competition in the market is distorted because the prices no longer reflect the actual costs. Currently, the erosion of privacy is a cost that is not correctly internalized into the price of certain goods on the market, because there is no market price on a unit of privacy. As such, some corporations show profits that are not based on the total of the costs their actions have on the society. [Medema & Mercuro, 2006, Määttä, 2006]Consequently, investors do not invest optimally. This is the second economical argument under mainstream economics for datenherrschaft: make visible the externalities of data gathering and processing, much like the environmentalist movement did in creating the concept of the environment. This way, the resources of the society will be in optimal use.

Obviously much research is needed to approximate the quantity of the utility loss created by the externalities of the erosion of privacy. Given that there is a phenomenon of asking for a prospective employee's Facebook password in the US [McGregor, 2012] we have a degree of certainty that such losses exist. Even if the research were to indicate a loss of aggregate utility, datenherrschaft as a concept need not be abandoned. Ethical considerations may sometimes justify utility losses for privileged parties, as the case of abolishing slavery in the USA demonstrates.

6 Conclusions

In current situation the individuals have little – or no –control over electrical information in internet or which, by nature, is private and sensitive for individual. Furthermore, the IPR's are constructed in such a way that they ensure the advantages of corporates over individuals. Individuals' possibility to have informed consent is compromised with opacity of agreements and frequent changes of those agreements. To have informed consent individuals should have common understanding about legal manners which is problematic and point out the imbalance between service provider(corporate) and individual.

Habermasian rational discourse demands that all parties have a say in the legislative process. As this is not what has historically taken place regarding the sphere of legislation pertinent to this paper, the current legislation does not meet the requirements of rational discourse or the demands of ethical justifications. Therefore, said legislation is lacking in legitimacy.

To protect individual, different regulation for individual personal information, the purpose of which is to protect individuals, should be implemented. There is an ethical need to protect individuals and ensure that their personal information, and thus privacy, is respected. This paper proposes that this change in legislation should come about by implementation of datenherrschaft, which grants individuals near absolute rights over their personal information. Datenherrschaft appears to meet the requirements of the brief ethical analysis n this paper. The most obvious law and economics criticism does not seem to constitute insurmountable barriers to implementation of datenherrschaft.

Further avenues of inquiry are more detailed ethical, legal, sociological and economic analysis, which must be carried out to ensure validation of arguments proposed in this paper. Obvious examples are a comparative law review of privacy legislation, inquiry into gathering and use of user information, economic impact of datenherrschaft and evaluating against different prevailing ethical theories.

References

Regulations:
Treaty on European Union (2010/C 83/01)

Treaty on the Functioning of the European Union (2010/C 83/01)

Strafgesetzbuch in der Fassung der Bekanntmachung vom 13. November 1998 (BGBl. I S. 3322), das zuletzt durch Artikel 5 Absatz 3 des Gesetzes vom 24. Februar 2012 (BGBl. I S. 212) geändert worden ist

Verordnung über das Informationssystem ARAMIS betreffend Forschungs- und Entwicklungsprojekte des Bundes (ARAMIS-Verordnung) vom 14. April 1999

Directives:
DIRECTIVE 95/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 October 1995

Cases:
European Court of Human Rights
Hachette Filipacchi Associés ("Ici Paris") v. France 23.7.2009

Mosley v. the United Kingdom 10.5.2011

Court of Justice of the European Union
Eugen Schmidberger, Internationale Transporte und Planzüge v Austria [2003] ECR I-5659

Omega Spielhallen—und Automatenaufstellungs—GmbH v Oberbürgermeisterin der Bundesstadt Bonn [2004] ECR I-9609

Joined cases C-92/09 and C-93/09 Volker und Markus Schecke and Eifert [2010] ECR I-0000

Supreme Court of Finland
KKO:2011:72

Bibliography

Bergelson, V. (2003). It's Personal But is it Mine? Toward Property Rights in Personal Information. UC davis Law Review, 37(379)

Boyle, J. (2008). Public Domain: Enclosing the Commons of the Mind. Yale University Press

Cohen, J.E. (2001) “Information Rights and Intellectual Freedom.” In Vedder, A. ed., Ethics and The Internet. Oxford, Intersentia

Cohen, J. (2006). Copyright, Commodification, and Culture: Locating the Public Domain. THE FUTURE OF THE PUBLIC DOMAIN, L. Guibault & P.B. Hugenholtz, eds., 121-166, Kluwer Law International

Cohen, J. (2008). Privacy, Visibility, Transparency, and Exposure. University of Chicago Law Review,. 75(1), Georgetown Public Law Research Paper No. 1012068

Fagundes, D. (2009). Crystals in the Public Domain. Boston College Law Review, 50.

Google. (2012). http://www.google.com/intl/en/policies/terms/, accessed 26.2.2012

Hughes, J. (1988). The Philosophy of Intellectual Property. Georgetown Law Journal, 77, 287-366

Kant I. (1785). Originally Grundlegung zur Metaphysic der Sitten, Several translations, two main taranslations:
Translated by Bennett J as Groundwork for the metaphysics of morals. 2008.
Translated by Salomaa J as Siveysopilliset pääteokset, Tapojen metafysiikan perustus. Porvoo, Werner Södeström Osakeyhtiö.1931

Kimppa, K. (2004) Intellectual Property Rights – or Rights to the Immaterial – in Digitally Distributable Media Gone All Wrong? In Lee Freeman and Graham Peace (eds.), Information Ethics: Privacy and Intellectual Property, Idea Group Publishing, Hershey, PA, USA

McGregor, Jena (2012). Forking over a Facebook password to an employer? online at http://www.washingtonpost.com/blogs/post-eadership/post/forking-over-a-facebook-password-to-an-employer/2011/04/01/gIQAVZKfTS_blog.html, accessed 01.06.2012

Medema, S. & Mercuro, N. (2006). Economics and the Law, Second Edition. Princeton University Press

Moore, A. (2003). Intellectual Property, Innovation, and Social Progress: The Case Against Incentive Based Arguments. The Hamline Law Review, 26, pp. 602-630

Moore, A. & Unsworth, K. (2005) 'Introduction' to Information Ethics: Privacy, Property, and Power (2005). Information ethics: privacy, property, and power, p. 11, A. Moore, ed., University of Washington Press, 2005

Määttä, K. (2006). Oikeustaloustieteen perusteet, Edita

Pollach, I. (2005). A Typology of Communicative Strategies in Online Privacy Policies: Ethics, Power and Informed Consent. Journal of Business Ethics, 62(3), 221-235

Spinello, R. A. (2003). The future of intellectual property. Ethics and Information Technology, 5(1), 1-16

Taylor, R. S. (2004). A Kantian Defense of Self-Ownership. Journal of Political Philosophy, 12(1), 65-78

Tuori, K. (2000). Kriittinen Oikeuspositivismi. Werner Söderström lakitieto oy

Zheleva, E., & Getoor, L. (2009). To join or not to join: the illusion of privacy in social networks with mixed public and private user profiles. Paper presented at the Proceedings of the 18th international conference on World wide web