



ELSEVIER

Available online at www.sciencedirect.com

ScienceDirect

journal homepage: www.elsevier.com/locate/CLSRComputer Law
&
Security Review

From ugly duckling to Swan. The rise of data protection and its limits

Ian Lloyd

National Research University, Moscow, Russian Federation

ARTICLE INFO

Article history:

Available online xxx

Keywords:

Data protection

Privacy

Taxation

Defamation

ABSTRACT

This article considers the development of data protection laws from a position on the periphery of legal consciousness to the situation where it is the subject of intensive legal and media publicity. Focusing on the recent controversies surrounding the use of Facebook apps for political purposes, the article will consider the role and limitations of data and privacy protection laws. The question will be posed – if not answered – whether national or regional laws can be effective in what increasingly is a global information society.

© 2018 Professor Ian Lloyd. Published by Elsevier Ltd. All rights reserved.

1. Introduction

Law and technology make uneasy companions. The legal system values qualities such as stability, predictability and certainly whilst continual change is the hallmark of technology. Information technology plays such a role in our lives today that it is difficult to remember a time where it existed very much on the periphery of social and legal consciousness, The Journal began in those days. UK academics indicating an interest in the topic were considered somewhat odd. It is hard to imagine, in the recent past, how narrow the confines of legal academia were. The only resources available were a small number of law reports and a few textbooks. Journals were also few and far between and few would have given a specialist one in an obscure area such as computer law any chance of survival.

It is my pleasure to have known Steve from these early days. Some years ago, I was charged with making a farewell presentation to a colleague whose tenure had been marked by a series of disasters and whose departure was widely welcomed. After much agonising I came up with the ambiguous farewell comment that but for our soon to be ex-colleague's efforts and activities, the department would not be in its present

state. It is almost cathartic to be able to use the phrase much more positively. But for the amazing work Steve has done on this journal, IT law would not be where it is today.

And what is the state of IT Law? It has come a long way but still has a long way to go. From a peripheral existence, IT is at the heart of almost every branch of the law. In some respects the law has lagged behind the technology but the pace of legal change is increasing. It is difficult to identify an area of the law that has not been affected by information technology. We have come a long way in a very (by legal standards) short period but there remains a long way to go. One of the recent high-profile incidents in the sector has concerned the role that data processing and marketing techniques have played in the recent US Presidential election and, less well documented, the referendum on the UK's continuing membership of the European Union. Within the UK and Europe, much of the debate has focused on the relevance of data protection laws to such activities. At the time of writing it is almost impossible to open a newspaper or watch a news programme without seeing some new revelation about the data processing activities of Facebook and, indeed, other social media websites. The imminent entry into force of the EU's General Data Protection Regulation (GDPR)¹ and the United Kingdom's Data Protection Act

E-mail address: ianlloyd@me.com

<https://doi.org/10.1016/j.clsr.2018.05.007>

0267-3649/© 2018 Professor Ian Lloyd. Published by Elsevier Ltd. All rights reserved.

¹ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural

2018 has also prompted many organisations to make significant changes and expansions to their published privacy protection policies.

Focusing to some extent on the recent Facebook controversies, this article will consider how relevant data protection laws are in the current environment. This relates in part to the provisions and effectiveness of legal concepts *per se* and also to the worth of national or regional measures within the context of global business environments.

2. The emergence of data protection and its relationship with privacy

Along with the phenomenon of computer crime, data protection was the legal topic that first brought computer related conduct to the attention of a wide audience. The world's first data protection statute was passed in Germany in 1974 and the seminal Council of Europe Convention opened for signature in 1981. The Data Protection Act of 1984 (surely an appropriate date for a statute concerned with the individual's protection in an expanding web of surveillance) was introduced by a rather reluctant British government typical of a historic establishment ambivalence towards privacy related legislation. Times have changed and the current Data Protection Bill, albeit somewhat mired in the Brexit debate, has been introduced with a deal more enthusiasm. It might be noted, however, although a search through the Committee stage debates on the Data Protection Bill in the House of Commons indicates that although the noun "privacy" was used on 45 times in the course of discussions. The same word appears only 3 times in the Bill itself, each time in the context of references to the use of the word in the title of the Privacy and Electronic Communications (EC Directive) Regulations 2003² (as amended) rather than as a topic in its own right. There appears to remain a clear reluctance to use the term in legislation in any substantive context.

3. Personality profiling and social media

Undoubtedly the most controversial recent (and ongoing) incidence of data misuse involves the alleged use of data generated by Facebook users in the course of a programme intended to influence voting behaviour in the 2016 US presidential election. Similar although currently less well documented allegations have been made concerning the use of similar tactics in the course of the referendum campaign concerning the UK's continuing membership of the European Union. In the course of these, it has been estimated that Facebook accounts belonging to around 87 million users, one million of whom were resident in the UK, might have been compromised.

Facebook was one of the first, and certainly one of the best-known examples of the phenomenon of what is referred to as

persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC. OJ 2016, L119/1. The Directive and the UK Act are both scheduled to enter into force on May 25 2018.

² SI 2003 No 2426.

social networking using social media web sites. Definitions in the sector are somewhat imprecise but the following appear to have widespread acceptance

Social networking is the practice of expanding the number of one's business and/or social contacts by making connections through individuals, often through social media sites such as Facebook, Twitter, LinkedIn and Google+.

Based on the six degrees of separation concept (the idea that any two people on the planet can make contact through a chain of no more than five intermediaries), social networking establishes interconnected online communities (sometimes known as social graphs) that help people make contacts that would be good for them to know, but that they would be unlikely to have met otherwise.³

Social media itself is defined as comprising:

websites and computer programs that allow people to communicate and share information on the internet using a computer or mobile phone⁴

In addition to providing a communications channel enabling billions⁵ of users to share news and information, Facebook provides a range of other applications that are intended to increase its attractiveness to potential users. Particularly for small businesses, a Facebook page offers at the technical level a simpler alternative to seeking to establish a presence on the WWW.

4. Personality tests

Personality tests have been one of the most popular apps available via Facebook but their origin considerably predates the computer era. The concept, which normally involves asking the subject to complete a questionnaire that has been designed to identify desirable (or undesirable) personality traits is generally considered to date to the First World War when tests were designed seeking to identify soldiers who might be prone to breakdown under the stress of shell fire.

The genesis of the Facebook scandal lay in an academically designed personality test, which was made available for completion on-line via the then new Facebook system.⁶

The myPersonality Facebook App, created by Dr David Stillwell and Dr Michal Kosinski in 2007, proved to be the most successful online personality testing App ever developed. Within a few

³ <https://whatis.techtarget.com/definition/social-networking>.

⁴ <https://dictionary.cambridge.org/dictionary/english/social-media>.

⁵ It is estimated < <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/>> that in the 4th quarter of 2017 Facebook had 2.2 billion active users. An active user is defined as someone who has logged into the service in the previous 30 days. In line with what appears to be a general trend in respect of Internet access, the majority of connections to Facebook come from mobile devices.

⁶ Facebook was launched in the United States in 2004. Initially it was available to students at Harvard University, and then extended to all US universities and from September 2006 to anyone with an email account.

Download English Version:

<https://daneshyari.com/en/article/6890407>

Download Persian Version:

<https://daneshyari.com/article/6890407>

[Daneshyari.com](https://daneshyari.com)