

Editorial

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This collection of papers from the BILETA 2020 conference addresses exciting new developments in both law and technology, from smart homes and cities to artificial intelligence and copyright laws looking to regulate online technology. A key theme present throughout is the impact of these technologies and regulations on fundamental rights and freedoms. As Voltaire famously said, “with great power comes great responsibly,” and therefore we must continue to assess and analyse the appropriateness and utility of our laws and protections in the face of technological and cultural developments.

The first selection of papers all consider privacy related issues, this is followed by papers considering matters of artificial intelligence, and lastly, online copyright infringement. The opening paper entitled *Seeking Legal Boundaries of Digital Home in the IOT Age: A Conceptual Reflection* examines how it has become critically important to find new feasible home boundaries that can separate the digital home from the outside world. Bo Zhao argues that a pure “digital home” that is geo-location free and device independent can be possible in the digital era due to the quick deployment of cloud computing and IoT technologies. The paper suggests that this digital home as a virtual container is characterized by mobile, mosaic and individual (private) nature, spreading online. It argues that instead of formally accepting the new home concept, which is still immature in view of technological developments, digital home protection should be granted under the current legal framework governing home protection.

Engaging with the theme of smart cities, Athena Christofi, Ellen Wauters and Peggy Valcke’s paper analyses the application of the lawfulness principle, which is a fundamental principle of data protection law. *Smart Cities, Data Protection and the Public Interest Conundrum: What Legal Basis for Smart City processing?* raises to important points. Firstly, in terms of public interest processing, the paper argues that the General Data Protection Regulation and the Data Protection Law Enforcement Directive may be insufficient to ensure the lawfulness of processing unless additional and foreseeable laws are adopted, which enable smart city development. Secondly, regarding private interest processing, the paper further argues that the data protection’s harmonisation objective may be eroded when diverging

national practices emerge due to regulators' desire to offer citizens increased protection in public spaces.

Moving on from the digital home context, Brenda Espinosa Apráez then analyses one of the dichotomies around which the European Commission has built its policies to facilitate and stimulate data sharing that is, the distinction between public sector and private sector data. *Reconsidering the Public-Private Data Dichotomy in the European Union's Data Sharing Policies* focuses on EU law and policies on accessibility and re-use of data to foster innovation and economic growth, included in Government-to-Business data sharing and Business-to-Business data sharing. Addressing the issue of facilitating and stimulating data sharing as a key element of a thriving data economy, the paper examines both, the assumptions underlying the public-private data dichotomy and whether these assumptions still hold true under the current dynamics of data production.

Lauren Elrick, in the next paper argues that while beneficial from the standpoint of simplifying data exchange, the Interoperability Regulations raise significant human rights concerns related to privacy and data protection. Building on a "complex landscape" through a holistic perspective, *Finding the Balance between Security and Human Rights in the EU Border Security Ecosystem* argues that the Interoperability Regulations fail to consider the importance of the purposes behind each individual database. The paper suggests that rather than looking at the interoperability provisions in isolation, greater attention should be paid to the wider context within which these databases have developed. It concludes that the Interoperability Regulations ignore such context, thus prioritising the development of new tools for security purposes at the expense of the human rights of migrants.

In the next article, *Children's Right to Privacy And Data Protection*, Cansu Caglar asks whether the article on conditions applicable to child's consent under the GDPR tackle the challenges of the digital era or create further confusion? Caglar highlights that children and their parents are often unaware of the privacy and security compromises they make and all possible impacts of data processing, data linkage and data aggregation that may affect their rights and freedoms while using new technologies. In light of this, the article examines the newly incorporated requirements and concepts in relation to conditions applicable to child's consent under the GDPR, and analyses whether the protection envisaged for children reflects the cognitive appraisal of a child compared to an adult. It focuses on the requirements for obtaining valid consent from the child or parent for the processing of children's personal data, and discusses the challenges faced during the implementation and enforcement of such provisions in practice and whether these requirements are sufficient to ensure the protection of children's rights and freedoms.

Daria Onitiu's paper follows, titled *Determining Your 'Fashion Identity' in Fashion Recommender Systems and Issues Surrounding the Right to Privacy*. This article considers the implications of AI on autonomy and informational privacy focusing on recommender engines in fashion e-commerce. Fashion recommender systems support the optimisation of social processes that are based on implementing fashion narratives on style and emotional attributes on clothing in the algorithmic process. Whilst fashion recommender systems illustrate incomplete semblance of individual behaviour, it bases the operation on the responsiveness of individual behaviour, impacting an individual's autonomy. In this respect, algorithmic processes engage in a process of interactive value creation based on the creation of an imaginary that affects the individual's subjective experience of self, and a person's identification of the self in a social context. The author argues that a deeper understanding of conditions that shape an individual's expression of inter-personal values regarding fashion recommender systems is needed.

Building on the topic of artificial intelligence, Alexandra Molitorisová and Pavel Šístek focus on another important issue in their paper, *Reimagining Electronic Communications Regulatory Environment with AI: Self-Regulation Embedded in 'Techno-Regulation'*. The authors examine how Brownsword's description of "techno-regulation" matches current trends in radio spectrum management being the precursor of all technologically managed environments. The paper assesses the driving forces behind the current trends in radio spectrum management, as well as the related regulatory fitness of techno-regulatory approaches. The authors uncover the ways in which regulatees attempt to disrupt, hack or compromise regulatory technology, and how radio spectrum management achieves control over compliance in the transformed environment.

Continuing on the topic of AI, Gülüm Bayraktaroğlu-Özçelik and Ş. Barış Özçelik take a look at the *Use of AI-Based Technologies in International Commercial Arbitration*. Their paper deals with the involvement of artificial intelligence based technologies in international commercial arbitration, considering its use in the assistance in the arbitral processes and the challenging question of replacement of human arbitrators with AI-arbitrators. The authors argue that the public policy requirement may act as an important barrier for the recognition and enforcement of arbitral awards given by AI-arbitrators. Nevertheless, if AI is able to assist by lessening the workload, speeding up the process, minimizing the costs and the risks of human mind efficiently, it may also establish a demand for a new regulatory framework for AI-arbitrators to replace human arbitrators.

Last, but by no means least, Sevra Guler Guzel's paper; *Article 17 of the CDSM Directive and the Fundamental Rights: Shaping the Future of the Internet*, discusses the incompatibilities and shortcomings of Article 17 of the Directive on Copyright in the Digital Single Market, in particular the filter obligations to prevent future copyright infringements for online

content-sharing service providers. The author highlights the adverse outcomes of the implementation of automated content recognition systems on fundamental rights with a focus on freedom of expression. Most importantly, this paper suggests procedural safeguards against the possible effects of the Article's obligations to ensure that the upload filters can be implemented in a way, which is compatible with the fundamental rights.

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Guest Editors