

Book Review: European Data Protection Regulation, Journalism, and Traditional Publishers

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BOOK

David Erdos, *European Data Protection Regulation, Journalism, and Traditional Publishers: Balancing on a Tightrope?*, 2019, Oxford University Press, 440pp, ISBN: 9780198841982

REVIEW

This book has achieved exactly what it set out to do. It successfully analyses the often contextually incompatible areas of data protection law and the ability to use and publish research in academic disciplines. This text balances such items in a tightrope fashion and has contended that there does not have to be any actual or perceived incompatibility between these areas. In doing so, it is argued that contextual rights balancing has value and should be generalised across all traditional publishers, and systematically and sensitively developed through structured and robust co-regulation. This would be done by using the new code of conduct and monitoring provisions included in the European Union's new General Data Protection Regulation (GDPR) as a broad guide.

The text presents the first comparative analysis of how both formal European Law and regulatory interpretation and enforcement have approached the interface between data protection and professional journalists and other traditional publishers since the inception of such laws in the 1970s to the present day. Central to the discussion and arguably

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performing the basis thereof, is the inherent level of confusion following the exponential development of European statutory law in this legal area. The European Data Protection Authorities (DPAs) sought to assist in the rectification of such matters. However, this text makes clear that the current contextual balancing approach by the DPAs has struggled to secure the unequivocal levels of clarity required to mitigate the current confusion. The author refers to both matters of irregularity in enforcement and the lack of strictness in setting requisite standards.

The chronological approach of the book provides sufficient depth without sacrificing nuance and does so in a logical manner. It begins fittingly with the foundational underpinnings of European data protection and freedom of expression via a technological and political discussion within the confines of human rights law. This is achieved by a supranational sociolegal and political analysis that again continues to adhere to the tightrope balance stated at the outset. It uniquely navigates the reader through not just the jurisprudence of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR), but it does so whilst recognising the limits placed on freedom of expression because of the codification of rights. However, the conclusion reached is that the predominant approach of EU/EEA Member States have rejected this legal systemisation via codification, with a preference for self-regulation and the preservation of individual constitutionality. In doing so, the author skilfully navigates the reader through a trilogy of the development of European data protection law and regulation that ranges from what is called First-Generation Data Protection (1970s–1990s); Second-Generation (1990s–2010s); and Third-Generation (2010s to present day).

The second part of the book provides a pinpoint analysis of European data protection in the context of professional journalism and the associated regulatory developments. The approach is delivered in the same generational way as the preceding section. It provides a comparative analysis of the legal instruments regulating European data protection in the context of professional journalism. However, it is in no way repetitive. This book cuts through the thickets of the past and present legal framework and arrives at balanced and substantiated conclusions. For instance, in the context of interpretive standard-setting relating to DPAs in the professional journalistic media, the author recognises the dominant approach has been one of contextual balancing with an emphasis on ensuring a clear link between statutory and self-regulation. Yet, there is also direct acknowledgement that the system is far from perfect or complete. Correspondingly, in addition to the findings made, Erdos builds on such items and highlights the need for increased coherent conceptualisation of the interrelationship between competing human rights, specific local statutory provisions, DPA standard-setting, and self-regulation.

The overall conclusion, amongst other items, is that there is a need for robust and strategic enforcement that will be assisted by increased financial and human resources which at present are severely lacking. This is based on the centrality of data protection regulation in the expressive activities of many traditional publishers. The book asserts that DPAs have a renewed task to bring regulatory coherence, balance, and effectiveness to this area. Nevertheless, Erdos acknowledges the difficulties posed by the inadequate financial and human factors, including the potential challenges posed by socio-technological change. In doing so, Erdos also recognises the constraints regarding the exploration of such

potentialities within the book. However, he still humbly highlights that, in spite of this, the key message is that the regulation of the journalistic media and other traditional publishers must be correctly determined. This is achieved by demonstrating the approach to date and persuasively formulating how these findings can form the basis for future recommendations to add certainty to this growing and central legal area.

Overall, this book can be described as an efficient vehicle which does not just explore the past and present legal routes, but it takes the reader as a passenger through the relevant contextual surroundings of this legal landscape in a coherent way. In achieving this, it arrives at a balanced destination without unnecessary detours. In short, this book is everything that a legal text of this nature should be, and it achieves what it set out to do. It provides a basis in which to procure an understanding in the navigation of this legal resource as a result of the tactical groundwork laid down at the outset through the aforesaid foundational underpinnings. Therefore, it is suggested that this book provides enough clarity for the curious civil society activist to gain a practical understanding of this legal area but also enough depth to inspire further legal research by lawyers and academics alike to better this legal field.