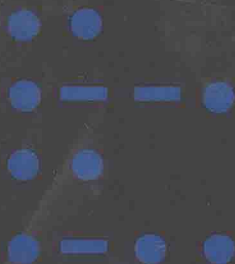


Cambridge Intellectual Property and Information Law

Emerging Challenges in Privacy Law

Comparative Perspectives

Edited by
Normann Witzleb
David Lindsay
Moira Paterson
Sharon Rodrick



CAMBRIDGE

EMERGING CHALLENGES IN PRIVACY LAW

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Edited by
NORMANN WITZLEB,
DAVID LINDSAY,
MOIRA PATERSON
and
SHARON RODRICK



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EMERGING CHALLENGES IN PRIVACY LAW

This collection of essays explores current developments in privacy law, including reform of data protection laws, privacy and the media, social control and surveillance, privacy and the Internet, and privacy and the courts. It places these developments into a broader international context, with a particular focus on the European Union, the United Kingdom, Australia and New Zealand. Adopting a comparative approach, it creates an important resource for understanding international trends in the reform of privacy and data protection laws across a variety of contexts.

Written by internationally recognised experts, *Emerging Challenges in Privacy Law: Comparative Perspectives* provides an accessible introduction to contemporary legal and policy debates in privacy and data protection law. It is essential reading for academics, policy makers and practitioners interested in current challenges facing privacy and data protection law in Europe and in the common law world.

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FOREWORD

This book with Australian and European perspectives on emerging challenges in privacy law comes at the right time, since those challenges are increasing both in size and in scope. It also sends a powerful message on the need for reform, so as to ensure that our legal safeguards in this area continue to be relevant in a fast changing world, and that adequate thought is given to different ways to make them more effective in practice, and more accessible and understandable for all stakeholders. This message is very welcome, and this at least for three good reasons.

The first reason is that 'privacy' and 'data protection' are more and more relevant in a world that is increasingly driven by information, and where detailed information on the behaviour of individuals is generated and used, almost twenty-four hours a day and seven days a week, in a variety of ways, both online and off line, without these individuals being aware of it, and where at the same time even the most experienced internet users are discovering the limits of their control. The fact that this is happening does not mean that 'privacy' and 'data protection' as fundamental rights or values have disappeared. The often repeated statement from Silicon Valley: 'Privacy is gone, get over it,' is contradicted by a growing sensitivity among consumers and citizens in many parts of the world, who are demanding more control over their personal information, more transparent data management practices and better accountability of relevant business organisations and government agencies.

What is emerging here is a growing disconnect between widespread practices in the field and consumers' and citizens' expectations. Many of them wish to benefit from the positive aspects of the Digital Society, and at the same time, to be more assured that their privacy interests are adequately protected. This is a powerful driver of legal reform, since more trust and confidence in the online environment are key conditions for economic growth, and particularly so in areas such as eCommerce,

eGovernment and eHealth. It is also increasingly clear that a sustainable development in these areas needs to be built on widely shared and practised modern legal safeguards for privacy and data protection.

The need for reform of present legal safeguards for privacy and data protection is now also driving important initiatives in different parts of the world and at different levels. This is another reason why the various contributions in this book are so welcome at this point in time. Both the OECD and the Council of Europe have revisited their current privacy frameworks, in order to update and reinforce them in the light of recent developments. The OECD Privacy Guidelines (1980) was the first major policy document to lay down privacy principles for its member states, including from Europe and the Asia-Pacific, and a revised version of the Guidelines was published earlier this year. The Council of Europe's Data Protection Convention (1981) was the first binding legal instrument, aiming at a comprehensive set of legal safeguards for the protection of personal data at national level. It has been ratified by forty-five countries in Europe and recently also by Uruguay, and continues to be open for accession by other countries around the world. The revision of the Convention is now well on its way.

The European Union has used the Council of Europe Convention as a reference point for its Data Protection Directive (1995) and other instruments, which specified its legal safeguards for the EU member states. The EU is now also engaged in an thorough review of its current legal framework for the protection of personal data. The results of this review will be visible in the near future and hopefully contribute to stronger and more effective protection of personal data, both within their own scope and beyond. These international instruments have influenced each other, and so far, this continues to be the case.

Let me mention two other examples: the US government has launched an initiative to update its approach to privacy, and the World Economic Forum is developing a major initiative to improve, and hopefully mainstream, 'Personal Data Governance'. All these activities will benefit from high quality input from academia, civil society and other relevant stakeholders. This book will therefore also be helpful as a source of reference and further reflection on how to take this subject forward at different levels.

All this means that we are at a crucial point in time that opens many opportunities. If we get it right and coordinate our efforts well, we will be able to reinforce our legal frameworks in the face of new technologies, and achieve more global privacy at the same time. That is at least the

perspective in which the EU is currently approaching its own review of the existing legal framework for data protection. It would be great if this book could help us all make progress in the same direction.

Peter Hustinx
European Data Protection Supervisor

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