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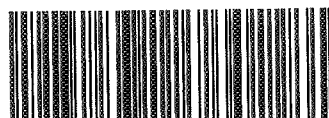
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Edited by *Ronald Leenes*

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Introduction: Online Dispute Resolution and Data Protection

RONALD LEENES¹

The current issue of *The International Review of Law, Computers, & Technology* brings together two recurring themes in law, computers, and technology. The first is one that is almost as old as computers, namely data protection, but still sparks new questions and challenges. The second theme is (online) dispute resolution, which, although not entirely new, is still in its infancy.

The data protection papers present current topics, CCTV and identity theft.

The UK has a long tradition of Closed Circuit Television systems and these systems easily outnumber those in use in other European countries, although some, for instance the Netherlands, appear to be catching up rapidly. Given this extensive experience in the UK, one would imagine that CCTV regulation is in good shape. Thomas Murphy, however, in his paper argues that there is room for improvement. He discusses CCTV surveillance in the light of the Data Protection Act of 1998, which apparently was not created with CCTV in mind. The Data Protection Act sees to the storage and processing of personal data in computer files and paper records. And although CCTV images clearly relate to individuals, the 'data' are usually not stored in neat systematic records, but in continuous and unsorted streams of both relevant and irrelevant images. These 'tapes' therefore resemble paper records, rather than computer files. This changes when investigating officers analyse and annotate the images thereby creating something that more resembles computer files as understood by the Act. Shifts such as these, according to Murphy, illustrate that current regulation is not suited to phenomena such as CCTV systems.

Adam Warren's paper addresses another contemporary issue, namely identity theft. He discusses the illegal trade in personal information in the contemporary wired up society and the way this problem is assessed in the 'What Price Privacy' report issued by the UK Information Commissioner's Office (ICO) in 2006. Warren stresses the importance of Privacy Impact Assessments (PIAs) and Privacy Enhancing Technologies (PETs) in fighting the illegal flow of personal information. He is not alone in vesting hopes on

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technology itself to combat the adverse effects of technology on privacy; also the European Commission underlines the importance of PETs.² The EU already invests in the development of PETs, for instance by funding research projects on privacy-enhancing identity management such as the EU Framework Programme 6 project PRIME.³ It remains to be seen whether the EU increases funding for this kind of research in FP7. A relevant call for proposals on this topic closed on May 8, 2007.

The remaining three papers are offsprings of papers presented at the second international Online Dispute Resolution workshop held on December 10, 2005 in Brussels, Belgium.

ICT offers opportunities to improve legal procedures, both inside and outside of court proceedings. Andrew Vincent and John Zeleznikow's contribution can be placed in the former category. They describe their research in developing decision support systems for plea bargaining in Australia. Their system is aimed at providing individuals, such as accused criminals, who may not qualify for legal aid assistance tools to have a better understanding of the consequences in terms of sentence for pleading guilty to a particular charge or set of charges. The authors discuss their work in relation to social information in the criminal system which, on the one hand may lead to discrimination, but on the other hand makes it possible to decide on the basis of all relevant factors of a case. Introducing ICT tools, which by definition embody a model of sentencing, creates interesting questions with respect to social factors that require more research.

Berry Zondag and Arno Lodder address online dispute resolution, out of court settlement therefore. Their starting point is that substantive and emotional issues in a conflict need to be separated and that improving the exchange of substantive information may de-escalate the conflict. The question then of course is how to separate substantive information from emotional information. They describe their research to date on this topic and discuss their efforts to devise a generic system for computer assisted dispute resolution.

In contrast to Zondag and Lodder, who emphasise substantive information, Marta Poblet and Pompeu Casanovas approach conflicts from the emotional side. Their claim is that handling emotions is essential in conflict resolution and that this aspect has been neglected in much work on Online Dispute Resolution. Their paper provides an overview of recent literature on emotions in fields such as cognitive psychology, sociology, anthropology, economics, and neural sciences. They relate these findings to the way emotions are handled in ODR. One of their conclusions is that sceptics of ODR systems that proclaim online systems inferior with respect to handling emotions (e.g., due to its lack of supporting nonverbal communication) may well be wrong. Each new medium develops its own paralinguistic cues to express emotions. This may require users some time to adapt to novel grammars and semantics, but the computer mediated ways of communicating may then work equally well as the traditional ones. UNDERSTOOD? :-)

Notes

- 1 Dr Ronald Leenes is associate professor (senior lecturer) at the Tilburg Institute for Law, Technology, and Society (TILT). His current research interests are privacy in online environments, including social networks, identity management and identity fraud.
- 2 See for instance the EU memo on Privacy Enhancing Technologies (PETs), MEMO/07/159, 02/05/2007. See <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/159&format=HTML&aged=0&language=EN&guiLanguage=en>
- 3 See <http://www.prime-project.eu>