DEF organised a session at Conference for Personal Data Protection and Computing ([CPDP 2014](#)) s

Chairman: Jacques Bus (SG DEF)
Moderator: Dennis Hirsch (Capital University Law School, US)
Speakers:

- Sarah Spiekermann (Univ Vienna), AT
- Kieron O'Hara, Univ of Southampton, UK
- Joerg Hladjk, Hunton&Williams, BE
- Jacqui Taylor, FlyingBinary, UK

THE VALUE (OR MONETISATION) OF PERSONAL DATA IN THE ERA OF BIG DATA

The Digital Enlightenment Forum 2013 held in Brussels called for an accountable, context-dependent personal data ecosystem with the checks and balances needed. It concluded that the rapidly evolving ability to process and derive value from "big data" does not merely increase the threat to privacy. It actually transforms it in ways that render vacuous previously operational concepts (Purpose limitation, Notice and Consent). This Panel will discuss: The various types of value, including monetary value, that Big Data can create, and the legal and policy issues that this raises; The relevance of the OECD principles and the possible need for revision; What are alternative available models that can translate privacy and the public good into effective data policy; What are the legal implications of big data, the restrictions under current law and unsolved legal and policy issues; Finally, how does this all map to the future and what does it mean for policy development?

Important questions are:

- How are personal data currently being valued or monetised and what does it mean for Big Data?
- What are the various types of value, in addition to monetary value, that Big Data can create?
- Which are the drawbacks and difficulties of monetisation of Big Data?
- What are the emerging trends and changes for Big Data that intersect and affect personal data and the value it brings?
- What legal challenges does the processing and trading of Big Data create under US and EU law (including the proposed General Data Protection Regulation), and how can those challenges be addressed?

Short report of the Session

Due to personal circumstances and sickness Dennis Hirsch could not participate, as well as Kieron O'Hara. Jacques Bus has taken the role of Moderator and Rocco Bellanova the chairmanship. Sarah Spiekermann replaced Kieron O'Hara as a panellist.

After an introduction of Jacques Bus on Digital Enlightenment Forum, the sponsor of the session, and generally the relevance of a discussion on the value of personal data in the era of big data, panel members introduced their topics.

Sarah Spiekermann (Un Vienna) proposed a way of monetising personal data. It is based on a 3-tier personal data information market model with privacy. The roles, rights and obligations for all actors would re-establish trust. It would allow for trusted relationships between data subjects and visible business partners, a service space supporting customer relationships with distributed information processing, and a rich safe big data space in which anonymised (on entry) data is stored which can be shared for social use, without incentive for the commercial use and sufficient legal basis and the necessary technology. Her presentation raised many questions concerning the security and trustworthiness of the safe big data space and concerning issues of ownership or property rights on personal data.

In his presentation Michael Donohue (OECD) explained the position of the OECD in the current debate of Big Data. The OECD agreed on adapting its privacy guidelines on which most of privacy law in the world is based. Value of personal data was already recognised by the OECD in 2008. But concluded then still that it was still too early to act on such a difficult and highly context/person dependent issue. On this moment the OECD discusses the consequences of Big Data and its analysis potential. The scale of data analysis necessitates a new emphasis on risk management in data processing. Accountability is a possible vehicle to get control, together with PbD and data breach notification.
The OECD calls for national privacy strategies. It sees at this moment no useful changes to the basic principles or at least could not come to consensus how to improve the principles. Further revisiting of these issues will be needed. Maybe not just focused on processing, but on possible boundaries for collection and possible use.

Joerg Hladjk (Hunton & Williams) addressed the Big Data challenges to data privacy principles, related to scope, consent and other grounds for processing, fair processing, purpose specification, data minimisation and deletion, security and quality of data and the effect of automated decision making. He distinguished, personal, pseudonymous and anonymous data in his discussion and concluded:

- need to preserve qualified anonymization through intent, commitment and contract not to re-identify;
- need for flexibility in definition of legitimate interest, coupled with the ability to demonstrate and defend;
- move from legalistic notices to icons, dashboards and layered notices to help understanding by user;
- Big Data use specified and no incompatible use, to be decided on case by case basis;
- profiling to be limited under warrant for significant decisions with legal effects on individuals.

Finally, **Jacqui Taylor (Flying Binary)** discussed practical ways of dealing with the problems of big data and privacy in the post-Snowden times. She indicated how new business models, policy models and legal frameworks and models could help solving many problems within existing or future regulations. Work is being done on a Cloud Services Framework that would give a major opportunity to bring to the public sector the same rapid, low-cost analytics and Business Intelligence used by industry. Also public data visualisation projects are developed and proof of concept visualisations given for a number of Government Departments.
She expressed the opinion that this work, with work on social media and Open Data movements are just the start of a social and technological transformation.

The presentations led to a discussion in which the main points were

- In the US ownership is difficult and focused on Property Rights, a monetised data market there will be very different from one in Europe, hence a global market will be all but impossible. EU lawyers are very sceptical about the property right discussion in US.
- Commercialisation might not be the biggest problem, but the governmental role should be revisited.
- Profitable Big Data use in private companies requires linking data, hence creating insecurity through single identifiers.
- Endowment bias. Nudging will give people the same answers over time, and lead to different reactions. No clarity in the proposal of Spiekermann about who pays for the Big Data space.

We need out of the box thinking at many levels in order to find acceptable solutions eventually. This can be at business level as the last speaker indicates, or based on rough general ideas like in the first presentation, and it must eventually lead to new legal or policy ideas that will have to be based on and can begin with what was presented by the second and third speaker.