

Editorial

With the fourth edition of EdpL now being published, we celebrate the first anniversary of our journal. We have managed to put together a high quality and internationally well received journal within a year. The launch of the journal seemed to be a matter of right timing: the ECtHR is increasingly issuing judgements on important data protection and data retention issues, the CJEU has adopted a more activist role, with the *Digital Rights Ireland*, *Google Spain* and *Schrems* cases all being ground breaking, and of course the discussion about a replacement of the Data Protection Directive 1995 by the General Data Protection Regulation (GDPR). Just when finalising the editorial, it was announced that on 18 December 2015, the Permanent Representatives Committee confirmed the compromise texts agreed with the European Parliament on data protection reform. The agreement was reached between the Council, Parliament and Commission on the 15 December. This agreement is in line with the request from the European Council for negotiations on data protection reform to be concluded by the end of 2015. It is still too early to determine the exact meaning and significance of the text as a whole and the compromises agreed upon. However, EdpL invites authors to submit articles on the meaning and interpretation of the definite text of the GDPR, which will presumably be published spring 2016, for a special issue on the GDPR (EdpL 2016/3), with deadline 18 May 2016.

This edition of EdpL contains three inspiring contributions. In 'The Data Subject', Peter Blume considers whether it is fortunate that data protection rules, as a starting point, apply to all physical persons as data subjects, or whether it would be better to differentiate between kinds of persons on grounds of their ability to act as a data subject. In order to protect all persons, it is argued that a principle of care should be part of data protection law. In 'Privacy and Freedom of Information in China', Yongxi Chen critically reviews how the Chinese legislation and courts handle the conflict between the right to privacy and freedom of information. The article finds that the courts have recognised a wider scope of privacy in the FOI context than what is usually recognised under the civil law doctrine, and have often undervalued or neglected the public interest in promoting government accountability through transparency. It argues that these approaches risk condoning the misuse of privacy to cover maladministration, and can hardly redress the weak legislative protection of privacy from government intrusion in the non-FOI context. Finally, Kathryn C. Montgomery and Jeff Chester examine in their paper 'Data Protection for Youth in the Digital Age Developing a Rights-based Global Framework' the history and legacy of the Children's Online Privacy Protection Act, identifying the key factors that shaped its ultimate outcome and explaining its legacy for both the digital children's marketplace and US regulation. The authors also highlight important trends in the expansion of the global media marketplace for children, discuss the implications of these developments for young people's privacy, and assess the adequacy of academic research to inform policy. The paper con-

cludes with recommendations for a global initiative to promote the digital rights of young people.

This edition's country report section introduces the reader to two national decisions concerning the 'right to be forgotten', taking into consideration the CJEU decision in *Google Spain*: one of these cases is especially noteworthy as it is a Spanish decision and the original *Google* case came from that setting. Sebastian Schweda gives an overview of the decision of the Supreme Court of October 2015 and as a point of comparison discusses in a further report the decision of the Hamburg Court of Appeal of July 2015 which remarkably extended the idea of suppressing a search function of a search engine also to the search function of the online archive of a press archive operator itself. These 'flash news'-style reports on national cases are completed by a short update of a very important case in the UK: as Lorna Woods explained in the previous issue's Reports section, the High Court Decision in the *Davis* case holding the DRIPA (Act on data retention) as inconsistent with EU law and the Digital Rights Ireland decision is groundbreaking. In the meanwhile the Court of Appeal has decided to stay the proceedings and refer a request for preliminary ruling to the CJEU, which is presented by Lorna Woods again. Further, an in-depth analysis of the proceedings in Belgium between the Belgian Privacy Commission and Facebook is included in the reports section. This conflict may have come to the attention of our readers already, but the country report by Stéphanie De Smedt provides us with a full picture of the background and procedure, as well as the very recent decision of November 2015 of the President of the Brussels Court of First Instance in the summary proceedings. Some of the findings of the President resemble other recent case law of the CJEU, apart from *Google Spain* also *Weltimmo*, which is discussed in the case notes section of this edition. The country reports section is completed by an overview of a recent Bill presented in France that attempts to create a comprehensive legal framework for digital issues of the French population. It is meant to prepare – or reflect – a 'Digital Republic' and Elisabeth Quillatre provides the most important planned innovations. It is an interesting attempt to include the citizens in the creation of the law as she explains.

In the case note section, we have two case notes. The first is by Mark Cole and Andra Giurgiu on the *Weltimmo* case by the CJEU. In this case the CJEU decided, inter alia, that Article 4(1)(a) of the Data Protection Directive must be interpreted as permitting the application of the law on the protection of personal data of a Member State other than the Member State, in which the controller with respect to the processing of those data is registered, in so far as that controller exercises, through stable arrangements in the territory of that Member State, a real and effective activity — even a minimal one — in the context of which that processing is carried out. Stéphanie De Smedt has written a case note on the *Coty* case, in which the CJEU held that Article 8(3)(e) of Directive 2004/48/EC on the enforcement of intellectual property rights must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which allows, in an unlimited and unconditional manner, a banking institution to invoke banking secrecy in order to refuse to provide, pursuant to Article 8(1)(c) of that directive, information concerning the name and address of an account holder. Finally, the

book review section contains two book review, namely a review by Ivan Škorvánek on 'Surveillance in Europe', edited by David Wright and Reinhard Kreissl and a review of Neil Richards' book 'Intellectual Privacy: Rethinking Civil Liberties in the Digital Age' by Damian Clifford. We hope you enjoy reading the fourth edition of the European Data Protection Law Review!

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