

# NRCCL news

Newsletter from NRCCL

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**UNIVERSITETET  
I OSLO**

## **Thesis on legal risk management**

Tobias Mahler submitted his phd-thesis *Legal Risk Management: Developing and Evaluating Elements of a Method for Proactive Legal Analyses, With a Particular Focus on Contracts*. This thesis assesses the degree to which risk management methods from other disciplines can be usefully adapted for the legal domain, to complement existing analytical methods in law. Legal risk management focuses on legal issues in the context of risk; its aim is to achieve an adequate management of risk in the legal context. The thesis develops two elements of a method for legal risk management: First, a legal risk management process can be based on ISO standard 31000. This process is intended to be used to identify risks (particularly legal risks) and to analyse and treat them in a structured manner. The second element is a graphical language to support the identification and analysis of legal risks. If the language was implemented in dedicated legal risk management software, it could be used to draw a particular type of diagrams to support a legal risk assessment. The two elements (i.e., the process and the graphical language) were used in an empirical case study in order to assess their utility for a practical legal assessment. Based on the empirical results, the thesis discusses the potential benefits as well as current shortcomings and limitations of legal risk management. On 1 September, Tobias successfully defended his thesis.

## **Thesis on biometrics and data protection**

On 3rd September, Yue Liu successfully defended her phd-thesis *"Bio-privacy: Legal Challenges for Privacy Regulations of Biometric Identification and Authentication"*. The main objective of the thesis is to find out what are the privacy issues raised by the

use of biometric technology and what might be the appropriate legal solutions. The characteristics of biometric information and the legal safeguards which exist on national and EU levels have been analyzed, with the aim of recommending appropriate safeguards in order to provide adequate human rights and personal data protection. The fundamental idea on which the thesis is based is that an interaction exists between biometric technology and privacy protection. The consequences of biometric technology development will unavoidably affect the function and nature of privacy protection. The legal measures of privacy protection could, however, be adjusted according to the challenges posed by the technology, and so ensure that the technology be used in a privacy-friendly manner. To achieve the central objectives of this thesis, four sets of sub-questions were investigated: 1) what are the privacy issues in the biometric context? 2) How are these issues dealt with under the law currently? What principles are applied? What interests are served? 3) Is current regulation sufficiently clear and does it facilitate a fair weighting of the diverse interests involved? 4) Generally, what is the most appropriate approach to deal with the legal challenges posed by the use of biometrics? On 3 September, Yue successfully defended her thesis.

## **Thesis on access to and disclosure of medical data**

Herbjørn Andresen has submitted his doctoral thesis *Tilgang til og videreformidling av helseopplysninger – Regulering og kontroll på tvers av IT-systemer og organisatoriske grenser (Access to and disclosure of medical data - Regulation and control across IT systems and organisational boundaries)*. The subject of the thesis is access to and disclosure of medical

data, with principal emphasis on the control of flows of information which are regular, desirable and justified. The starting point is the double requirement in the Act on Personal Health Data Filing Systems (helseregisterloven) that access can only be given to the extent it is necessary to enable the relevant (medical) personnel to carry out his/her work and in accordance with applicable provisions on confidentiality. The regulation of access to and disclosure of medical data has two main components. One component is the general requirement that access control is part of an organisation's information security policy. The requirements for information security stem from data protection law, and are based on internal control as a regulatory method. The other component is made up of concrete rules on when an exception can be made from a medical personnel's duty of confidentiality, and on what conditions. The duty of confidentiality, which is primarily regulated in the Act Relating to Medical Personnel (helsepersonelloven), has been almost exhaustively regulated, and is binding for any single person who handles medical data. The thesis ends with an examination of how well suited different technological authorisation principles are to represent different sides of the regulation, and under which conditions. Herbjørn will defend his thesis on 21st October 2010 at 12:15 in the Teologisk eksamenssal (Domus Academica), and will hold a trial lecture from 10:15 - 11:00 on the same day.

### **Thesis on dynamic network**

Emily M. Weitzenboeck has submitted the phd-thesis *Between contract and partnership: Dynamic networks as collaborative contracts and more*. The last two decades have witnessed the growth of new forms of entrepreneurial cooperation such as dynamic networks like virtual enterprises and enterprise pools. These business forms are often hybrid, having elements of both contract-based organizations and corporate forms, in particular partnership. The thesis examines the relative utility of contract and partnership law in fostering and maintaining these emerging business models, focusing on dynamic networks. The justification for looking at this legal issue is this emerging business reality. The thesis does not aim to look at all of contract and part-

nership law but only at those aspects of both of these fields of law that are relevant to this business reality. Focus is directed at how these dynamic networks are organized and how the behaviour of their member firms is regulated. Through this analysis, the interplay and limits of contract and partnership law is explored. The background and preconditions for the emergence and growth (or otherwise) of such business forms is also investigated. Emily will defend her thesis on 5th November at 10:15 in the Gamle Festsal, and will hold a trial lecture on 4 November from 16:15-17:00.

### **Thomas Olsen defended his thesis**

Cand. jur Thomas Olsen at the NRCCL's Section for eGovernment Studies, successfully defended his thesis on "Personvernøkende identitetsforvaltning" (Privacy enhancing identity management) for the ph.d. degree on the 26th March in the Gamle festsal. The examination committee comprised Professor Jon Bing, University of Oslo (chair), Professor Peter Blume, University of Copenhagen and Professor Cecilia Magnusson Sjöberg, University of Stockholm. The defence was chaired by Professor Kåre Lilleholt. The supervisors were Associate Professor Lee A. Bygrave (NRCCL), advocate dr. juris Rolf Riisnæs and Professor Dag Wiese Schar-tum (NRCCL).

### **Maryke S. Nuth defended her thesis**

On Friday 11th June, Maryke Silalahi Nuth publicly defended her thesis "E-Commerce Contracting: The Effective Formation of Online Contracts" in Auditorium 14 (Domus Biblioteca). On Thursday 10th June, she held her trial lecture on "Software contracts: The interplay between the definition of the contract object and the agreed specifications, price and schedule" in the Teologisk eksamenssal, Domus Academica.

### **New phd project on data protection in civil aviation**

Olga Mironenko is the NRCCL's latest doctoral research scholar, funded by the University of Oslo, with a project dealing with "Data protection and security in civil aviation". Last year Olga was one of our Master in Laws students and wrote a masters dissertation on "Air passenger data protection: data

transfer from the European Union to the United States” (Complex 2/2010). Data protection in civil aviation is an exciting and difficult research topic that we look forward to learning more about!

### Project with surveys legal challenges in eGovernment

Cand jur Malin Ranheim was employed on 1st February as a researcher for 1 year on a project dealing with the relationship between the Personal Data Act (personopplysningsloven) and other general administrative legislation in the context of eGovernment. Taking the Act on the Administrative Procedure Act (forvaltningsloven) as her starting point, Ranheim will examine its relationship with other supporting laws; first and foremost the Personal Data Act and regulations issued under it, the eGovernment regulations (eforvaltningsforskriften), as well as the Act on the Right of Access to Documents held by Public Administration (offentleglova) and the Archives Act (arkivlova) and their regulations. The basis of the research is a questionnaire survey which was carried out at the NRCCL in spring 2009, and which showed that public administration finds it difficult to apply these laws in unison. Ranheim will follow up this questionnaire by using interviews with lawyers working in public administration and will chart these legal challenges more thoroughly. On the basis of the interviews, she will also make a de lege lata analysis of selected research issues. Everything points towards a very limited knowledge within the public administration on, for example, the relationship between the Act on the Processing of Administrative Cases (forvaltningsloven) and the Personal Data Act (personopplysningsloven). This research is therefore going into important and exciting unexplored territory!

### Good news from VERDIKT

The VERDIKT programme of the Norwegian Research Council has recently announced the funding of new projects. Out of 181 applications, 21 projects have received funding and the NRCCL is involved in three of these projects! In other words, three out of the four applications that the NRCCL participated in received funding, and all four applications made it to the ”final round”. More specifically, the following projects have received

funding:

- Governance of the Domain Name System and the Future Internet: New Parameters, New Challenges (applicant: Department of Private Law/NRCCL). The project leader at the NRCCL is Lee A Bygrave.
- Inclusive identity management in new social media (principal applicant: Norsk Regnesentral). The project leader at the NRCCL is Dag Wiese Schartum.
- Samhandling i offentlig sektor - SemicolonII (principal applicant: Karde A/S). The project leader at the NRCCL is Dag Wiese Schartum.

This means that we are able to issue a call for applications for four new research or post-doctoral positions in autumn, with a duration of 2 - 3 years per position.

### Has copyright expired?

... was the title of a seminar held on the 20th January in connection with the book launch of Thomas Rieber-Mohn's thesis on Digital privatkopiering (digital private copying). The seminar attracted more than 240 attendees who filled up the canteen in Gyldendalhuset (including the balcony!). In addition to Thomas's presentation, Ole-Andreas Rognstad (Department of Private Law) held a presentation and Jon Bing (NRCCL) chaired the final panel debate. The event was held in collaboration between Gyldendal Norsk Forlag, Forbrukerrådet (Consumer Council) and the NRCCL.

### Study trip to Namur and Brussels

Each year our LLM students in the international masters of law programme are taken on a study trip. This year the group visited the NRCCL's sister institution CRID (Centre Recherche de Informatique et Droit) at the Facultés Universitaires Notre-Dame de la Paix in Namur, Belgium. The highlight of the visit was a seminar with presentations by researchers from both the NRCCL and CRID:

- Lee Bygrave (NRCCL) ”Informational Concepts in Law”
- Julien Jost (CRID) ”Consumer Protection in Telecommunication after the 2009 Review of the European Regulatory Framework”

- Hervé Jacquemin (CRID) “Consumer Protection in E-Commerce”
  - Maryke Silalahi Nuth (NRCCL) “E-Commerce Contracting: The Effective Formation of Online Contracts”
  - Jean-Marc Dinant (CRID) “Cookies and Fair Consent: An Issue for Privacy”
  - Jon Bing (NRCCL) “Online Intermediary Liabilities”
  - Katerina Shaw (NRCCL) “Protection of Intangible Cultural Heritage Under Intellectual Property Law Versus Sui Generis Rights”
  - Ekaterina Chakhrakia (NRCCL) “The Role of National Regulatory Authorities in Settlement of Disputes Between Service Providers”
  - Augustin Reyna (CRID) “The Transfer of Personal Data to Latin-American Countries: The Adequate Level of Protection and Habeas Data”
- The group also visited the Brussels office of the international law firm Hunton & Williams (900 lawyers with offices in a number of countries). The law firm has a specialised business area on privacy led by Christopher Kuhner. Together with his colleagues Cedric Burton and Oliver Proust, he discussed the practical challenges stemming from data protection from a legal and business perspective. Finally, meetings were also held with, and presentations made by, representatives from EFTA:
- Haakon Riegels (EFTA) “EFTA, EU and the EEA Agreement”
  - Jens Gastner (EC) “EU Patent Policies”
  - Helge Sønneland (Norway’s Ministry of Culture/NRCCL) “Copyright and the EU”

### **eForvaltningskonferansen 2010**

On 10th and 11th February, the NRCCL/SITAS organised the eForvaltningskonferansen 2010 (eGovernment Conference) together with Fagforbundet, NTL and EI&IT-forbundet at the Oslo Conference Centre. The conference was the third of its kind and was attended by around 150 participants from all the country. Minister Rigmor Aasrud of the Ministry of Government Administration, Reform and Church Affairs inaugurated the conference.

Among the conference themes was universal design, ICT and the Act on the Right of Access to Documents held by Public Administration (offentleglova), information security and public administration standards. Tommy Tranvik and Dag Wiese Schartum from the NRCCL both gave presentations. The eForvaltningskonferansen 2011 is scheduled for 9th - 10th February and will focus entirely on data protection in electronic public administration.

### **Successful birthday celebrations**

On 19th March the NRCCL celebrated 40 years since it was set up. After a technical programme where inter alia recently submitted ph.d. theses were presented, there was a socio-technical programme in the afternoon which included the inauguration of the “Wall of doctoral candidates”. At present there are portraits of 17 doctoral candidates from the NRCCL including the title of the doctoral thesis and the year it was defended. In the near future, two new portraits will be hung (see information on submitted theses and successfully defended theses in this edition of NRCCL’s News).

### **Lectures, articles, etc.**

- Tobias Mahler held a guest lecture on his ph.d. thesis on legal risk management at, respectively, the Institut for Rättsinformatikk – Stockholm, Institut für Informations-, Telekommunikations- und Medienrecht – Münster and Institut for industriell økonomi, risikostyring og planlegging – Stavanger.
- Tommy Tranvik held the introductory talk at the eForvaltningskonferansen 2010 “Om hvorfor informasjonssikkerhetsregelverk ikke virker – og litt om hva som virker” (On why the regulatory regime on information security does not work - and what works). At the same conference, Dag Wiese Schartum spoke about “Eksposering av ansatte i offentlig forvaltning på nett: Hvilke regler gjelder og hva mener de ansatte selv?” (The exposure of public sector employees to the Net: Which norms apply and what do the employees themselves think?) The conference was held on the 9th - 10th

February in Oslo.

- Lee A Bygrave participated in the first "Asian Privacy Laws Symposium" at the Cyberspace Law & Policy Centre, University of New South Wales, Sydney on the 3rd - 4th March 2010.
- Dag Wiese Schartum held the introductory talk at the danish Tax Ministers Conference on digitalisation and the rule of law in Odense on the 25th March. Dag discussed the question "Sætter de eksisterende forvaltningsretlige regler fornuftige rammer for den digitale forvaltning?" (Do the existing administrative law rules set a reasonable framework for eGovernment?) Schartum also took part in the concluding panel debate.
- On the 28th March, Jon Bing held a talk on "The Scandinavian View on Legal Informatics" at the 25th BILETA conference (organised by the British and Irish Legal, Educational and Technical Association), in Vienna.
- Tobias Mahler's tirsdagskaffe-seminar on the 27th April on the German court decision on the data retention directive was reported in Computerworld and in the Advokatbladet.
- Lee A Bygrave was invited to take part in the so-called "policy forum" on "Policy, Information and Technology" organised by the Oxford Internet Institute, University of Oxford, in co-operation with the Dutch Scientific Council for Government Policy at the Dutch prime minister's office. The event was private and took place on the 19th May.
- Jon Bing has recently contributed the following two book articles: "Elektroniske spor. Om samspill mellom personvern og teknologisk utvikling" (Electronic trails. On the interplay between privacy and technological development) in Kristin Clemet and John O. Egeland (eds.) "Til forsvar for personvernet" (In defence of privacy); and in Fernández-Barrera et al (ed.) "Law and Technology - Looking into the Future" where Jon wrote an article on "The future of the trade in information and a world history of the legal types of contracts giving access to information".

## New publications in the Complex series

- Anton Geist: Using citation analysis techniques for computer-assisted legal research in continental jurisdictions (Complex; nr. 1/2010).
- Olga Mironenko: Air passenger data protection: data transfer from the European Union to the United States (Complex; nr. 2/2010)
- Christian Rydning: Extended collective licenses : the compatibility of the Nordic solution with the international conventions and EC law (Complex; nr. 3/2010)
- Dag Wiese Schartum: Personvern og trafikksikkerhetsteknologi (Privacy and Intelligent Transport Systems) (Complex; nr. 4/2010)