



Lecture 21: Information Privacy, Accountability and Ethics

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This lecture

- Reminders: data protection, GDPR
- Privacy, data subjects, data controllers
- What is ethics about?
- What is accountability about?
- Data controller's performance in protecting privacy
- Data controller's story about performance
- Persuasion as explanation and evaluation
- Accountability to data subject
- Accountability to society (case of most liberal democratic open societies)

Reminders

- **Data protection** = the process of safeguarding sensitive information from loss, corruption, or unauthorized access.
 - Implemented by data controllers/ data protection officers
 - Ensures **privacy**
- **GDPR** = EU law that harmonizes data protection rules across Europe
 - Applies in the UK as UK GDPR and the Data Protection Act 2018, implemented after Brexit to ensure continuity of data protection law
 - Mandates strict, lawful processing of personal data
 - Grants individuals control over their information: right to be informed, of access, of rectification, of erasure, to data portability, to object/restrict.
 - Strengthens individual **privacy** rights

New terms

- **Data subject** = identified or identifiable natural person whose personal data is being processed
- **Data controller** = individual or organisation that determines purposes and means of processing personal data; must prove compliance with data protection laws like the GDPR
 - In larger companies, dedicated individual or team
 - In smaller companies or if data processing not a core business activity, responsibilities assigned as an additional duty to an existing role, **including sometimes to software engineers**
- **Privacy** = "Social concept that relates to the collection, dissemination and appropriate use of personal information held by a third party" (Sommerville ESP)
 - Individual right according to European Convention of Human Rights, the Charter of Fundamental Freedoms of the EU and United Nations.
 - Privacy is the right, data protection is the practical implementation

What is ethics about?

- Good and bad
- Human rights
- Right and wrong conduct; standards for judging these (moral principles; normative)
- Duty/obligation ('ought')
- Inherent morality, or consequentialism
- Absolute, or relative
- Procedural, or substantive
- Applied (e.g., business/professional)
- Etc.
- Reminder: [ACM Code of Ethics](#), [BCS Code of Conduct](#)

What is accountability about? (1)

- GDPR, Article 5(2): ‘The controller shall be responsible for, and be able to **demonstrate compliance** with [the data protection principles in] paragraph 1 (“accountability”).
- GDPR, Recital 85: ‘as soon as the controller becomes aware that a personal data breach has occurred, the controller should notify the personal data breach to the supervisory authority...unless the controller is able to **demonstrate**, in accordance with the accountability principle, that the personal data breach is **unlikely to result in a risk to the rights and freedoms of natural persons.**’

Accountability involves (at least) demonstrating something

What is accountability about? (2)

- Reporting (stories, narratives; (Raab 2012a, 2017)) about **substantive** actions (**accountability for what?**)
 - functions, performance, events (e.g., data processing, data breaches, data sharing)
- Relationships (**accountability to whom?**)
 - within organisation
 - outside organisation
 - Agents
 - Customer
 - Society
- **Procedural:** GDPR's 'demonstration' (**how is accountability done?**)
 - communications, documents, reports

First: consider substance

- **Compliance** with privacy/data protection law is very important, but:
 - Is the data controller's processing of personal data (the act/performance) **ethical**?
 - Need to specify criteria for judging 'good', 'bad', 'right', wrong', etc.
 - Rules? Principles? 'Contextual norms' (Nissenbaum 2010)?
- Ethical quality of act/performance of data processing
 - If shortcomings: reasons?
 - Many interests
 - Many motives
 - Counter-pressures against ethical performance

If performance is ethically dubious, stories cannot launder it

Second: consider stories (1)

- Ethical quality of **story about data-processing performance**
 - Honesty, truthfulness, fidelity to rules of accounting
 - No secrecy
 - No spin
 - 'Genuine', equality-based relationship between account-giver and audience
 - Willingness to admit error

Second: consider stories (2)

- Acceptance of need:
 - to report
 - for transparency and openness
 - for dialogue
- Ethical value
 - Formal respect for rights, needs, interests of others
 - Extra-legal and human civility

Second: consider stories (3)

- Could say: 'here is how and why I fell short substantively (e.g., in protecting your privacy), but I am transparent about that'
- This is **procedurally** but not **substantively** ethical unless it leads to improved performance
- It is about confession (and maybe about apology); shame and guilt (?)
- It is open to criticism about **persuasion**

Persuasion

- Aim of explaining substantive performance in privacy-protective processing, or of putting the performance in a good light, is to **convince** you
 - but could be propaganda, manipulation, rhetorical skill, misinformation, disinformation, incomplete
- You then **evaluate** the validity of the explanation
 - but your acceptance could reflect:
 - your gullibility
 - your lack of information
 - your lack of ways to evaluate it
 - your desire for the goods or services
 - and/or a culture of preparedness to forgive ethical failure

Data controller's accountability to the data subject

- With reference to the data subject's interest/stake
 - as customer
 - as a citizen
- For the ethics of the substantive data-processing **performance**
- For the ethics of the **storytelling** about it

Data controller's accountability to society (case of most liberal democratic open societies) (1)

- Likewise, for the ethics of the substantive **performance** as a data processor
- Likewise, for the ethics of the **storytelling** about it
- Why?
 - The robustness of performance and storytelling have to do with the **ethics of actions** as well as **truth**
 - Society has a stake in truth, truthfulness, trust, trustworthiness
 - (Information) privacy (and other rights and values) is a **common, social and public good**, not only an individual right (Regan 1995; many others)

Data controller's accountability to society (case of most liberal democratic open societies) (2)

- Story about the data processing must be open **to inspection, rebuttal and dialogue** by everyone (Raab 2012a)
- All should be entitled to information and decide to reject or accept the story, and to debate with data-controller
- All might have other information, interpretations, or insight about data-controller's honesty, performance, account
- You and others could therefore give an **alternative story**, to be debated alongside data-controller's

Data-Controller's Motives for Ethical Substantive and Procedural Performance

- Easier, cheaper (but what if it weren't?)
- Reputation-building and -maintenance
- Reduce likelihood of being found out
- 'Honesty is the best policy'
- 'Dishonesty doesn't pay'
- But what if it *did* 'pay' because
 - data-controller can get away with it?
 - no-one cares what data-controller does or says?
 - social, legal or ethical institutions are weak?