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Privacy, Surveillance and Informed Consent in Digital Environments: The Facebook Case Study

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Content

Abstract.....	3
1. Project Outline and Aims.....	4
2. Theoretical Foundations.....	6
2.1. <i>The Idea of Privacy</i>	6
2.2. <i>Human Rights and Data Protection Principles</i>	7
2.3. <i>Web 2.0, Social Media and Surveillance</i>	9
2.4. <i>Informed Consent and Contract Formation</i>	10
3. Research Questions.....	12
4. International State of Research	16
5. Innovation and the Breaking of New Ground.....	22
6. Empirical Design and Research Methods.....	24
6.1. <i>User Interface Analysis</i>	24
6.2. <i>Qualitative face-to-face Interviews</i>	24
6.3. <i>Representative Online Survey</i>	25
6.4. <i>Sampling on Facebook</i>	26
7. References.....	28
7.1. <i>Legislation, Policy Papers and Documents</i>	36
7.2. <i>Cases</i>	38

Abstract

This study investigates the handling of information privacy issues by the social networking site Facebook. Data protectionists have repeatedly pointed out problematic features of the website's functionality. It is alleged that the mode of operation is in conflict with a series of fundamental personal rights; these claims are countered with the statement that the use of Facebook occurs on a voluntary basis. But is there really a voluntary assignment of privacy and data protection entitlements? Do the users even know about their entitlements and what general terms and conditions they have agreed to during the sign-up process? Is there actually a valid and freely given informed consent in terms of contract law and consumer protection? To clarify these questions, the study carries out a sophisticated socio-legal analysis to match the significant legal aspects with corresponding behaviour patterns and attitudes of affected users. The interdisciplinary research design is based on the epistemological approach of triangulation and combines legal interpretation and analysis with non-reactive qualitative as well as quantitative statistical methods of social science. By doing so, potential contradictions and discrepancies between law, behaviour and opinion can be analysed and legal prescriptions will be compared with empirical facts. The study therefore examines the point of intersection between 'is' and 'ought' and studies the contractual negotiation of privacy entitlements in digital environments. The question is whether social media users consciously surrender their existing fundamental rights, and it can therefore be said that privacy is actually no longer a social norm in present times, or whether those concerned simply forfeit in their daily routines. to the inherent law of code.

Keywords: Privacy, Data Protection, Consumer Rights, Informed Consent, General Terms and Conditions, Social Media, Big Data, Surveillance Studies, Privacy by Design, Post Privacy

1. Project Outline and Aims

The study examines discrepancies between the fundamental right to privacy and the way Facebook actually works and is used by the affected subjects in everyday life. Since its start in 2004, the social networking site Facebook has become very popular. It reached one billion users by autumn 2012,¹ and according to 'Alexa - The Web Information Company'², Facebook is currently the number two ranked website in the world behind Google, but followed by YouTube, Yahoo!, Amazon, Baidu and Wikipedia. Since Facebook conducts all its transactions outside the United States and Canada over 'Facebook Ireland Ltd', based in Dublin, for tax reasons, all other users in the world are subject to European law.³

This study therefore analyzes a range of European privacy principles, with particular attention to those aspects in which Facebook has been said to act unlawfully by legal scholars and data protection organizations.⁴ According to EPIC Facebook has a history of changing its service in ways that harms users' privacy.⁵ Data protectionists are countered by the argument that the use of Facebook is free and on a voluntary basis, underpinned by the fact that users agree to Facebook's terms of use and policy statements when they register on the website. In actual fact, the registration process constitutes the conclusion of a contract, but the act of signing a contract is required to meet certain legal principles.⁶ A key premise therefore is the one of Informed Consent, meaning that the agreement must be made freely and with accurate knowledge of the terms signed (see Article 2 (h) and 7 (a) of the European Data Protection Directive 95/46/EC). If the affected subject consents under these conditions then the processing of personal data is lawful.

¹ Cf. *Die Presse* (11.01.2013): Marktführer: Nur vier Social Networks trotzen Facebook, URL: http://diepresse.com/home/techscience/internet/1331612/Marktfuehrer_Nur-vier-Social-Networks-trotzen-Facebook?_vl_backlink=/home/index.do (accessed 10 Dec 2013). Cf. *Thomas Hutter's Facebook Marketing und Social Media Blog* (11.04.2012): Facebook: Die weltweite Entwicklung der Facebook-Benutzer, URL: <http://www.thomashutter.com/index.php/2012/04/facebook-die-weltweite-entwicklung-der-facebook-benutzer> (accessed 10 Dec 2013).

² Cf. *Alexa - The Web Information Company*, URL: <http://www.alexa.com/siteinfo/facebook.com> (accessed 10 Jan 2014).

³ Cf. *Schrems* 2011, 523; cf. *Ennöckl*, *Der Schutz der Privatsphäre in der elektronischen Datenverarbeitung*, 2014, 349 et seqq.

⁴ Cf. *Unabhängiges Landeszentrum für Datenschutz Schleswig Holstein*, Thema Facebook, URL: <https://www.datenschutzzentrum.de/facebook/> (Access 16 Dec 2013); Cf. *Europe vs. Facebook* 2012; *Schrems* 2011; *Weichert* 2012a, 2012b; *Der Landesbeauftragte für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern* 2011; *Article 29 Data Protection Working Party* 2009; *Irish Data Protection Commissioner* 2011; *Electronic Privacy Information Center*, EPIC's FTC Facebook Complaint 2010; URL: http://epic.org/privacy/facebook/EPIC_FTC_FB_Complaint.pdf (accessed 16 Dec 2013).

⁵ Cf. *Electronic Privacy Information Center* 2010, URL: http://epic.org/privacy/facebook/EPIC_FTC_FB_Complaint.pdf (accessed 16 Dec 2013).

⁶ Cf. *Radin*, *Boilerplate. The Fine Print, Vanishing Rights and the Rule of Law*, 2013.

The project therefore examines how informed the users actually are about the terms they have signed and allegedly agreed to. Is there a valid informed consent in terms of data protection and consumer rights? Does Facebook's practice misleads the consumer, or is it likely too? By analysing the consent and awareness of the users I examine a range of other data protection issues and privacy principles which are closely connected with the use of Facebook. These include, for example, the right to erasure and to be forgotten, the collection limitation and finality principle, the right of access, the confidentiality of communication, the use of pseudonyms and the opt-out issue. On the basis of these issues I will measure the awareness of users (and non-users) and compute a 'knowledge index'. I want to know what the data subjects actually think about the discrepancies between Facebook's terms and the privacy principles when they are confronted with them in the course of this survey. Are the legal entitlements to data protection actually no longer important to the users? Is privacy 'no longer a social norm' as Facebook CEO *Mark Zuckerberg* says?⁷ Has the understanding of privacy in society changed so much that, in the case of interactive social networking sites like Facebook, one could say it is a fundamental right with an expiration date?⁸ Are we dealing with a paradigm shift regarding fundamental rights? Do the affected users waive their fundamental right consciously and voluntarily or do they surrender and resign in the daily routines of communication due to the power of program code, in the sense of *Lessig's* 'code is law'?⁹

The architecture of the online environment is a question of the code that creates it. Because that code can be changed, the interface of a site can make a significant difference in how privacy is dealt with. The actions of the data subjects are crucially determined by the design and functionality of the technology.¹⁰ The architectural features of Facebook obviously tend to facilitate certain kinds of social interactions and not others.¹¹ In contrast to constitutional law and data protection principles, which represent the shared political values of a society, the software of Facebook transmits the ideology of a private company. The analysis of informed consent and data protection principles is therefore strongly linked to questions of informational self-determination, personal responsibility and the regulation of privacy in the digital age.

⁷ Cf. *The Guardian* (11.01. 2010): Privacy no longer a social norm, says Facebook founder, URL: <http://www.guardian.co.uk/technology/2010/jan/11/facebook-privacy> (accessed 16 Dec 2013).

⁸ Cf. *Peissl*, Privacy – Ein Grundrecht mit Ablaufdatum?, 2003.

⁹ Cf. *Lessig*, Code – Version 2.0, 2006, 5 et seqq.

¹⁰ Cf. *Bennett/Raab*, The Governance of Privacy, 2006.

¹¹ Cf. *Hull/Lipford/Richter/Latulipe*, Contextual gaps: privacy issues on Facebook, 2011.

2. Theoretical Foundations

2.1. The Idea of Privacy

The discussion about privacy as a social requirement and fundamental right is an old one. While at first glance, the concept seems simple, many have struggled to adequately describe what privacy actually is.¹² Due to the length-limitation by uni:docs it is not possible to discuss the term entirely and in detail. However, important historical and current privacy research comes, for example, from *Samuel Warren & Brandeis*, *Jürgen Habermas*, *Richard Sennett*, *Alan F. Westin*, *Solove*, *Bennett & Luis Raab*, *Beate Rössler* or *Helene Nissenbaum*. Important Austrian scholars are, for example, *Ewald Wiederin*, *Walter Peissl*, and *Christian Fuchs*.¹³

Wiederin describes the historical development of the fundamental right to privacy as a gradual formulation of the spatial-territorial demarcation in terms of domiciliary rights. According to him, the spatial right of privacy was refined, abstracted, and transferred to communicative aspects over the centuries. In the Austrian Reichstag of 1849, for example, the protection of the confidentiality of correspondence was reasoned on the argument that the letter is 'the wandering house of thought' and therefore needs the same legal protection as the domiciliary right.¹⁴ Today, typical values associated with privacy are: autonomy, creativity, dignity, freedom, freedom of thought, friendship, human relationships, independence, individuality, individual integrity, intimacy, love, psychological well-being, reputation, respect, self-development, and self-determination.¹⁵

In general, it can be said that privacy is a key value of democratic societies that is strongly related to freedom and especially freedom of opinion and expression. Monitoring and surveillance is seen as privacy intrusion because it can lead to changes in behaviour and a reduction in freedom. People who are aware of surveillance do not behave according to their own conscience, but as they think that others would expect from them. The loss of privacy and inde-

¹² Cf. *Lin/Loui*, Taking the Byte Out of Cookies, 1998.

¹³ See *Warren/Brandeis*, The Right to Privacy, 1890; *Habermas*, Strukturwandel der Öffentlichkeit, 1962; *Sennett*, Verfall und Ende des öffentlichen Lebens, 1974; *Westin*, Privacy and Freedom, 1967; *Solove*, Understanding Privacy, 2008a; *Solove*, I've Got Nothing to Hide and Other Misunderstandings of Privacy, 2008b; *Bennett/Raab*, The Governance of Privacy, 2006; *Rössler*, Der Wert des Privaten, 2001; *Nissenbaum*, Privacy as contextual integrity, 2004; *Nissenbaum*, Privacy in Context, 2010; *Wiederin*, Der grundrechtliche Schutz der Privatsphäre: Eine Entwicklungsgeschichte, 2003; *Wiederin*, Privatsphäre und Überwachungsstaat, 2003; *Wiederin*, Kommentierung von Art 8 EMRK, 2002.

Peissl, Privacy – Ein Grundrecht mit Ablaufdatum?, 2003; *Fuchs*, An Alternative View of Privacy on Facebook, 2011b; See also *Berka*, Das Grundrecht auf Datenschutz im Spannungsfeld zwischen Freiheit und Sicherheit, 2012;

¹⁴ Cf. *Wiederin*, Der grundrechtliche Schutz der Privatsphäre, 2003: 31 et seqq.

¹⁵ Cf. *Fuchs* 2011b; *Schoeman*, Privacy: Philosophical Dimensions of the Literature, 1984; *Rössler* 2001; *Solove* 2008a.

pendent individuals therefore can be a political problem because functioning democracy requires self-determined individuals and freedom of expression. In this context *Bennett & Raab* refer to so-called 'chilling effects' brought by surveillance.¹⁶ According to *Peissl*, such behavioural adaptation can even lead to the stagnation of social, cultural and economic developments.¹⁷ Besides the view that some form of privacy and informational self-determination is inevitably needed, there are various arguments that privacy is not automatically a positive and defensible value.¹⁸ The critics of the privacy concept argue, for example, that it promotes an individual agenda and can harm the public or common good;¹⁹ that privacy can be used to legitimize domestic violence or gender inequalities in families²⁰ or that it can be used to manipulate others by the selective disclosure of personal facts. Furthermore, it is argued that privacy can be used to protect anti-social behaviour, illegal activities, or even terrorism.²¹ In the domains of law enforcement and security, privacy protection is perceived as assisting criminals more than as protecting innocent members of the public.²² Privacy has also been criticized as a western-centric value that does not exist in other societies in the same individualistic form.²³

2.2. Human Rights and Data Protection Principles

The global establishment of data protection laws and guidelines since the 1970s can be seen as a selective specification of the concept of privacy and its scope, understood in the sense of a right to control personal information.²⁴ One such set of guidelines are the Fair Information Practice Principles (FIPs) of the US Federal Trade Commission. According to *Bennett & Raab*, the codification of the Principles have varied over time and space but appear either explicitly or implicitly within all national data protection laws, voluntary codes, and standards, and are also the basis of international agreements, including the OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (OECD 1980) the Convention of the Council of Europe (CoE 1981) and the Directive on Data Protection of the European Union (Directive

¹⁶ Cf. *Bennett/Raab*, 2006, 23 et seqq; Cf. *Assion*, Was sagt die Rechtsprechung zu Chilling Effects?, Telemedicus, 2014. See also EGMR v. 06.09.1978, App. no. 5029/71, Rn. 41; EGMR v. 29.06.2006, App. no. 54934/00, Rn. 78, EGMR v. 01.07.2008, App. no. 58243/00, Rn. 56; EuGH v. 8.4.2014, Rs. C-293/12 und C-594/12, Rn. 37;

¹⁷ Cf. *Peissl*, 2003, 155 et seqq.

¹⁸ Cf. *Bennett/Raab*, 2006; *Fuchs* 2011b.

¹⁹ Cf. *Etzioni*, The Limits of Privacy, 1999; *Lyon*, The Electronic Eye, 1994; *Tavani*, Informational Privacy, 2008.

²⁰ Cf. *Rössler* 2001; *Lyon* 1994; *Quinn*, Ethics for the Information Age, 2006; *Wacks*, Privacy, 2010.

²¹ Cf. *Arndt* 1949; *Posner* 1978; *Wasserstrom*, Privacy. Some Arguments and Assumptions, 1978; *Quinn*, 2006.

²² Cf. *Bennett/Raab* 2006.

²³ Cf. *Burk*, Privacy and Property in the Global Datasphere, 2007; *Hongladarom*, Analysis and Justification of Privacy from a Buddhist Perspective, 2007.

²⁴ Cf. *Wiederin* 2003; *Bennett/Raab* 2006.

95/46/EC).²⁵ Common to all of these documents are five core principles of privacy protection: (1) Notice/Awareness; (2) Choice/Consent; (3) Access/Participation; (4) Integrity/Security; and (5) Enforcement/Redress.²⁶ In Europe, the right to privacy and protection of personal data is established by Art 7 and Art 8 of the European Convention on Human Rights (ECHR).²⁷ Other relevant legislations are the European Data Protection Directive 95/46/EC and the so-called 'e-Privacy' Directive 2002/58/EC but also the Data Retention Directive 2006/24/EC.²⁸ Due to transcontinental fragmentation, there are ongoing efforts to a more comprehensive and coherent European policy on the fundamental right to privacy and data protection. The planned General Data Protection Regulation is intended to replace Directive 95/46/EC in the (near) future, but the introduction of the regulation is accompanied by massive lobbying by international IT companies who want to secure their access to the European data market.²⁹ Objectives and principles of the current directive remain valid until the new regulation comes into force, however. The question if Austrian (data protection and civil) law can be applied is one of the first crucial legal issues of the present study.³⁰ To clarify this issue it is required to refer to the provisions of international private law (IPR).³¹ Due to the business model of 'social media' sites (Web 2.0) and the distribution of roles in data protection law, based on data subject, data controller and data processor, this needs to be assessed case-related with respect to the different specific features, services and functionalities of Facebook.³²

²⁵ Cf. *Bennett/Raab*, 2006; *Organisation for Economic Cooperation and Development (OECD)*, Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, (23. September 1980); *Council of Europe (CoE)*, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28.I.1981; *Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data*, Official Journal L 281;

²⁶ Cf. *Federal Trade Commission*, Fair Information Practice Principles, 2012.

²⁷ Cf. *European Convention on Human Rights (ECHR)*, Rome, 4.XI.1950.

²⁸ In Austria, the right to privacy of correspondence (telecommunications secrecy) is also grounded in Article 10 and 10a of the *Staatsgrundgesetz (StGG)*, RGBI 1867/142.

²⁹ Cf. General Data Protection Regulation, COM(2012) 11 final, European Commission, Brussels, 25.1.2012; Cf. *futurezone.at* (20.11.2012): Facebook lobbyiert hart gegen EU-Datenschutz, URL: <http://futurezone.at/netzpolitik/12558-facebook-lobbyiert-hart-gegen-eu-datenschutz.php> (Access 24.01.2013); cf. *futurezone.at* (24.01.13): EU-Datenschutz: Bereits 50 Interventionen, URL: <http://futurezone.at/netzpolitik/13688-eu-datenschutz-bereits-50-interventionen.php> (Access 24.01.2013).

³⁰ Cf. Article 4 of Directive 95/46/EC; cf. § 3 Bundesgesetz über den Schutz personenbezogener Daten (Datenschutzgesetz 2000 - DSG 2000) BGBl. I Nr. 165/1999; cf. *Ennöckl*, 2014, 349 et seqq; cf. *Jahnel*, Das Grundrecht auf Datenschutz, 2006; *Jahnel*, Handbuch Datenschutzrecht, 2010; *Khakzadeh-Leiler*, Die Grundrechte in der Judikatur des Obersten Gerichtshofs, 2011.

³¹ Cf. Internationales Privatrechtsgesetz (IPR-Gesetz) BGBl. Nr. 304/1978; Cf. VO (EU) 1215/2012 des Europäischen Parlaments und des Rates vom 12. Dezember 2012 über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen, Abl L 351/1;

³² Cf. *Proksch & Fritschke Frank Fletzberger Rechtsanwälte GmbH*, Klage: Maximilian; Schrems gegen Facebook Ireland Limited, 2014, 8 (37 et seqq).

2.3. Web 2.0, Social Media and Surveillance

Further approaches to privacy and data protection can be found in the field of Surveillance Studies. During the past decades, scientific discourse on privacy implications from computer-based surveillance and monitoring has generated a range of concepts.³³ *Roger Clarke* coined the term *dataveillance*,³⁴ *David Lyon* speaks of *electronic surveillance*,³⁵ and *Gary T. Marx* established the concept of *new surveillance* with reference to the qualitative change brought on by digital processing of data.³⁶ With regard to Web 2.0 platforms and social networking sites, the Austrian Surveillance Studies scholar *Christian Fuchs* also speaks of '*mass self-surveillance*'.³⁷

In contrast to classic one-sided (top-down) mass media reception, Web 2.0 platforms are primarily characterized by interactive participation and user-generated content. Web 2.0 is sometimes also referred to as the '*participatory web*'.³⁸ While a prevailing view is that interactive participation by the audience automatically leads to emancipatory and empowering processes and a revitalization of citizen-based democracy,³⁹ *Andrejevic* goes one step further by taking a look at underlying power relations and the structures of ownership.⁴⁰ He assumes that the modality of control has shifted so far that forms of criticism that once challenged existing power structures have been widely incorporated: '*... whenever we are told that interactivity is a way to express ourselves, to rebel against control, to subvert power, we need to be wary of power's ruse: the incitation to provide information about ourselves, to participate in our self-classification, to complete the cybernetic loop.*'⁴¹

Web 2.0 interactivity is therefore understood as a supervised public or sociality that functions as informational feedback to maintain power relations. Thus private details will be published virtually but in turn the virtual public is managed and controlled by private companies and profit-oriented organizations. In the information age, personal data are recognized as new

³³ Cf. *Fuchs* 2011a; *Bennett/Raab*, 2006.

³⁴ Cf. *Clarke*, *Information Technology and Dataveillance*, 1988.

³⁵ Cf. *Lyon*, *The Electronic Eye*, 1994.

³⁶ Cf. *Marx*, *Gary T.*, *What's New About the "New Surveillance"?* 2002.

³⁷ Cf. *Fuchs*, *New Media, Web 2.0 and Surveillance*, 2011a; *Fuchs*, *Social Media. a critical introduction*. 2014.

³⁸ Cf. *Fuchs* 2011a; *Beer/Burrows*, *Sociology and, of and in Web 2.0*, 2007; *Boyd*, *The Significance of Social Software*, 2007; Examples are: Facebook, Google+, Orkut, Cloob, Odnoklassniki, MySpace, studiVZ, VKontakte, QZone, Xing, LinkedIn, Twitter and Youtube.

³⁹ Cf. *Clarke*, *Information Technology*, 1994; *Lessig*, 2006; Cf. *Frankfurter Allgemeine* (19 February 2011): *Die Kinder der Facebook-Revolution*, URL: <http://www.faz.net/aktuell/politik/arabische-welt/staaten-im-umbruch-die-kinder-der-facebook-revolution-1592378.html> (accessed 10 Dec 2013).

⁴⁰ Cf. *Andrejevic*, *Critical Media Studies 2.0*, 2009.

⁴¹ *ibid.* 2009, 41.

economic resource and have even been referred to as the oil of the current era.⁴² The excessive collection of personal data appears problematic in particular when the motivation for such collection shifts from economic interests towards control and power.⁴³ Threats also arise where the collection and processing of personal data leads to automated software-based classification and discrimination of those affected.⁴⁴

2.4. Informed Consent and Contract Formation

The principal of 'informed consent' originally came out of the medical context.⁴⁵ In general informed consent means a specific act of will to engage in contract formation or to grant permission before conducting a (medical) intervention or personal investigation. Thus, the term is central in social research and empirical gathering of personal data as well.⁴⁶ Like the concept of privacy, informed consent is formally grounded on the principle of respect for persons.⁴⁷

Generally it can be said that there is much controversy over interpretations of accurate consent.⁴⁸ However, legally informed consent is judged on the basis of the degree of freedom and information a person must have in relation to what is happening.⁴⁹ Today informed consent is a central principle of data protection and contract formation.⁵⁰ If the concerned data subject agrees, data processing (usually) is in conformity with the law. However, the act of informed consent is subject to certain premises. As defined in Article 2 (h) of Directive 95/46/EC 'the data subject's consent' shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed. In Article 7 (a) the Directive further states that the processing of data is allowed only if the data subject has given his consent unambiguously. In addition, we have to consider Directive 93/13/EEC on unfair terms in consumer contracts.⁵¹ The Directive implies that acquirers of goods and services should be protected against the abuse of power by the seller or

⁴² Čas/Peissl, *Datenhandel -ein Geschäft wie jedes andere?*, 2006; Mayer-Schönberger/Cukier, *Big Data*, 2013; Reichert, *Big Data*, 2014;

⁴³ Cf. Rössler 2001.

⁴⁴ See 'panoptic sorting' and 'social sorting', Gandy 1993; Lyon 2003.

⁴⁵ Cf. Faden/Beauchamp, *A History and Theory of Informed Consent*, 1986; Gorovitz, *Informed Consent and Patient Autonomy*, 1988; Lin/Loui, *Taking the Byte Out of the Cookies*, 1998.

⁴⁶ Cf. Wiles/Heath/Crow/Graham, *Informed Consent in Social Research*, 2005; cf. Spriggs, *Consent in Cyberspace*, 2009, cf. Spriggs, *Understanding Consent in Research Involving Children*, 2010.

⁴⁷ Cf. Lin/Loui, 1998.

⁴⁸ Consider for example the paradoxical case that 'no' could sometimes mean 'yes' in the context of sexual relations, or that a failure to protest might amount to consent.

⁴⁹ Cf. Radin, 2013; cf. Ennöckl, 2014, 183 et seqq.

⁵⁰ Cf. Knyrim, *Datenschutzrechtliche Zustimmungserklärungen richtig formulieren und platzieren*, 2008; cf. Leitner, *Transparenzgebot, Privatautonomie und Auslegung*, 2011.

⁵¹ Cf. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal L 095;

supplier – particularly against one-sided standard contracts and the unfair exclusion of essential rights (see Art. 3 (1) and (2) as well as Art. 4 (1). Further relevant national provisions are the transparency requirement according § 6 par. 3 KschG (Austrian Consumer Protection Act), but also § 864a ABGB (Austrian General Civil Code) on surprising or unfair clauses, § 879 par. 3 ABGB on lawfulness and morality (*boni mores*), and § 915 ABGB on ambiguous formulations.⁵²

Irrespective to the already above mentioned question about the applicability of Austrian law, the principle of informed consent becomes contested, particularly in situations like the Facebook sign-up process, because of the information and power asymmetry between the contracting parties.⁵³ If general terms and conditions are imposed by such a monopolist, it becomes hard to argue that the clauses are analogous to what the concerned users would have chosen. *Margaret J. Radin* furthermore states that when such practices come into widespread use, as it is in digitized societies, it causes democratic degradation.⁵⁴ General terms and conditions of private companies displace the legal regime enacted by the state and transport the concerned to a firm's own preferred legal universe. Thus, fine print has the effect of deleting users legal rights.⁵⁵ The ideal that people should be governed by law instead of by arbitrary power was historically stated as 'the rule of law, not of men'. It is the law that should rule, not a monarch or a group of financial aristocrats. Laws of the state are supposedly established in the public interest, whereas standard business terms and boilerplate schemes, by their nature, are in the private interest of a particular company and its economic strategy. Each time informed consent is undermined but treated as if it were valid, the normative idea of consent inherent to a contract and the protection of fundamental rights is being degraded. According to *Radin*, widespread boilerplate undermines the rationale that justifies the state's power to organize the polity. A society that routinely allows this to happen on a large scale has a legal system that is deprived of normative power. Moreover *Radin* states, if millions of people are held to sell their fundamental rights, then the related political system gets subverted.⁵⁶

⁵² Cf. *Krejci*, Kommentierung von § 879 ABGB, 2000; *Graf*, Kommentierung von § 879 ABGB, 2013; Austrian General Civil Code (Allgemeines bürgerliches Gesetzbuch - ABGB), StF: JGS Nr. 946/1811; cf. *Khakzadeh-Leiler*, Die Grundrechte in der Judikatur des Obersten Gerichtshofs, 2011, 73 et seqq.

See also Cf. *Proksch & Fritschke Frank Fletzberger Rechtsanwälte GmbH*, Klage: Maximilian; Schrems gegen Facebook Ireland Limited, 2014, 15 et seqq; Cf. OGH 14.11.2012, 7 Ob 84/12x; OGH 22.06.2011, 2 Ob 198/10x; OGH 22.04.2010, 2 Ob 1/09z;

⁵³ Cf. *Papacharissi/Fernback*, 2005; *Fuchs* 2011a.

⁵⁴ Cf. *Radin*, 2013, 105 et seqq.

⁵⁵ Cf. *Radin* 2013, 8 et seqq.

⁵⁶ Cf. *Radin*, 2013, 33 (178 et seqq).

3. Research Questions

In the case of Facebook, the concept of free and informed consent is important at the outset for the so-called 'sign-up' process and the binding nature of the general terms and conditions of use.

According to the aforementioned theoretical approaches, I would first like to analyse the degree of freedom related to the process, particularly in connection to the strategy of direct marketing and personalised advertising via data synchronisation (see 'friend finder'). Furthermore I am interested in the impact of Facebook's monopoly position and if there are any instances of peer group pressure – especially among teenagers – or any aspects of power asymmetry seen by those affected.

The registration process constitutes the conclusion of a contract between Facebook and the respective user. By 'signing up', users agree to the Terms of Use and signify that they have read the Data Use Policy and the Cookie Use Directive. In doing so they have to deal with three primary documents. The current Terms are 10 pages or 4,487 words long; the Data Use Policy runs 14 pages or 9,379 words; and the Cookie Directive is 8 pages long and includes 3,159 words.⁵⁷ The Austrian data protection initiative 'Europe vs. Facebook', further argues that Facebook's privacy policy is not well structured and links to countless other pages. If users follow these links, they will end up finding more than 200 pages of additional information that governs or further explains Facebook's processing of personal data. In addition, there is no specific check box that has to be ticked and the text that informs the user about their consent is the text with the smallest print on the entire page. Moreover, colours and contrast are used in a way that distracts users from the text that informs them about their consent to the privacy policy.⁵⁸

Thus from a socio-legal perspective I am interested in the question of whether users realize that they have contracted with Facebook. It is also questionable whether the terms have been read by the users. Do the users even know that the contract consists of three parts? The principle of informed consent also presumes that the terms have been understood and that the concerned are aware of the ongoing data processing. I therefore would like to measure how in-

⁵⁷ Date of last revision: 11 December 2012.

⁵⁸ Cf. *Europe vs. Facebook*; Complaint against Facebook Ireland Ltd. – 08 'Consent and Privacy Policy', 2011.

formed the users actually are about significant aspects of Facebook's policy. To examine this question, I compute a knowledge index based on the following issues:⁵⁹

— ***The principle of informed consent in the course of the sign up process as well as in connection with specific functions and features***; Compare: 'Data Use Policy, VI. Some other things you need to know' and 'Terms of Use, Section 5.9' with Art. 2 (h), Art. 6 (1) (a), (b) and Art. 7 (a) of Directive 95/46/EC, Art. 3 (1), (2), and Art. 4 (1) of Directive 93/13/EEC; and Art. 13 (4) of Directive 2002/58/EC;⁶⁰

— ***The privacy by default vs. opt-out issue***; Compare: Art. 6 (1) (a) and Art. 7 (a) of Directive 95/46/EC and *Europe vs. Facebook* 2011; Complaint against Facebook Ireland Ltd. – 16 'Opt-Out'; Federal Trade Commission 2012, 2. Choice/Consent; EPIC's FTC Facebook Complaint 2010: 16).⁶¹

— ***Information from the data subject and the right of access***; Compare: 'Data Use Policy, VI. Some other things you need to know' with Art. 10, 11 and 12 of Directive 95/46/EC;⁶²

— ***The right to erasure and to be forgotten***; Compare: *Data Use Policy: I. Information we receive and how it is used - Deleting and deactivating your account* with Art. 6 (1) (e) and Art. 12 (b) of Directive 95/46/EC and Art. 17 of the General Data Protection Regulation;⁶³

— ***The limitation of collection and the finality principle***; Compare 'Data Use Policy: III. Other websites and applications - About social plugins' with Art. 6 (1) (a) and (b) Directive 95/46/EC;⁶⁴.

⁵⁹ For further information on the ongoing socio-legal discussion I primarily want to refer to the websites of the ULD-Schleswig-Holstein and the data protection initiative *Europe vs. Facebook*. Both provide a range of documents related to the mentioned issues.

⁶⁰ Cf. *Article 29 Data Protection Working Party*, Opinion 5/2009 on online social networking, 2009; *Europe vs. Facebook*; Complaint against Facebook Ireland Ltd. – 04 'Synchronizing', 2011; Cf. *Landgericht Berlin*, Urteil verkündet am: 06.03.2012; In dem Rechtsstreit des Bundesverbandes der Verbraucherzentralen und Verbraucherverbände Verbraucherzentrale Bundesverband e.V gegen Facebook Ireland Limited, 2013; cf. EuGH 06.11.2003, C-101/01, *Lindqvist*;

⁶¹ Cf. *derStandard* (27 December 2012): Schwester von Facebook-Gründer stolperte über Datenschutzeinstellung, URL: <http://derstandard.at/1356426277980/Schwester-von-Facebook-Gruender-stolperte-ueber-Datenschutzeinstellung> (accessed 25 Nov 2013).

Cf. *derStandard* (14 December 2012): Unfreiwillig geoutet: Wenn Privates auf Facebook öffentlich wird, URL: <http://derstandard.at/1348285981291/Unfreiwillig-geoutet-Wenn-Privates-auf-Facebook-oeffentlich-wird> (accessed 25 Nov 2013).

⁶² Cf. *Europe vs. Facebook*, Complaint against Facebook Ireland Ltd. – 10 'Access Request', 2011; Irish Data Protection Commissioner 2011; Weichert 2012a.

⁶³ Cf. *Europe vs. Facebook*, Complaint against Facebook Ireland Ltd. – 05 'Deleted Posts'; Complaint against Facebook Ireland Ltd. – 11 'Removal of Tags'; Complaint against Facebook Ireland Ltd. – 14 'Removed Friends', 2011; EuGH 13.5.2014, C-131/12, *Google v. Mario Costeja González*;

⁶⁴ Cf. EPIC's FTC Facebook Complaint, 2010, 22; Cf. *Schröder/Haxwell*, Die Verletzung datenschutzrechtlicher Bestimmungen durch sogenannte Facebook Fanpages und Social-Plugins, 2011; Cf. *futurezone.at* (11.03.2013): Facebook-Klicks sagen Eigenschaften voraus; URL: <http://futurezone.at/digitallife/14579-facebook-klicks-sagen->

— **The confidentiality of communication;** Compare: 'Data Use Policy, VI. 'Some other things you need to know' with Art. 5 Directive 2002/58/EC;⁶⁵

— **Real names vs. pseudonymous use;** Compare: 'Terms of Use, 4. Registration and Account Security' and 'Data Use Policy, I. Information that is always publicly available' with Art. 6 (1) (c) Directive 95/46/EC and Directive 2002/58/EC;⁶⁶

— **The issue of data security;** Compare: 'Terms of Use, 16. Disputes' with Art. 17 Directive 95/46/EC;⁶⁷

All the abovementioned issues are a matter of ongoing legal negotiation. Each issue is a legal controversy by its own, with a series of corresponding documents, complaints and court decisions. In each case, it is claimed, that Facebook's policy is in contradictory to official legal entitlements. In addition to these issues and principles, our analysis touches on a range of other aspects like the altering of contract terms without the users' consent (Terms of Use, 14. Amendments), the IP license permission, (Terms of Use, 2. Sharing Your Content and Information), or the Instant Personalization function (Data Use Policy, III. Other websites and applications). The principle of informed consent is connected to several features like tagging other users in photos, using apps that access friends' data, or using the 'friend finder' function. Topics like informed consent and the opt-out issue run throughout the entire inquiry. The whole analysis is further related to the question of legal enforcement. Thus the project is about the problem of regulating privacy in digital transnational environments.

eigenschaften-voraus.php (accessed 20 Nov 2013); See also *Unabhängiges Landeszentrum für Schleswig-Holstein*, Facebook; URL: <https://www.datenschutzzentrum.de/facebook/index.html> (accessed 16 Nov 2013).

⁶⁵Cf. Weichert, Facebook. der Datenschutz und die öffentliche Sicherheit , 2012b; Cf. *alternet.org* (30 June 2013): Teen Jailed As Terrorist Threat After Making Sarcastic Comments on Facebook, URL:

<http://www.alternet.org/news-amp-politics/teen-jailed-terrorist-threat-after-making-sarcastic-comments-facebook> (accessed 10 July 2013). Cf. *change.org*, Petition: Release My Son Justin Carter - Being Prosecuted For A Facebook Comment, URL: <http://www.change.org/petitions/release-my-son-justin-carter-being-prosecuted-for-a-facebook-comment> (accessed 10 July 2013). Cf. *Zeit Online* (18 July 2012): Facebook überwacht die Chats seiner Nutzer, URL: <http://www.zeit.de/digital/datenschutz/2012-07/facebook-chat-ueberwachung> (accessed 10 January 2013). Cf. also *Reuters* (12 July 2012): Social networks scan for sexual predators, with uneven results, URL: <http://www.reuters.com/article/2012/07/12/us-usa-internet-predators-idUSBRE86B05G20120712> (accessed 16 Nov 2013). Cf. *Zeit Online* (16 July 2013): Bei schlechten Witzen kommt die Polizei, URL: <http://www.zeit.de/digital/internet/2013-07/scherze-facebook-twitter-polizei> (accessed 16 Nov 2013).

⁶⁶ Cf. *EPIC's FTC Facebook Complaint* 2010; Article 29 Data Protection Working Party); *The Huffington Post* (27 July 2011): Facebook's Randi Zuckerberg: Anonymity Online 'Has To Go Away', URL: http://www.huffingtonpost.com/2011/07/27/randi-zuckerberg-anonymity-online_n_910892.html (accessed 27 Nov 2011). Cf. *Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein*, URL: <https://www.datenschutzzentrum.de/facebook/20121214-anordnung-fb-ltd.html> (accessed 25 January 2013). Cf. *ULD-Schleswig-Holstein* (24.04.2013). Pressemitteilung, OVG Schleswig-Holstein: For Facebook Germany data protection law does not apply, URL: <https://www.datenschutzzentrum.de/presse/20130424-facebook-klarnamen-ovg.htm> (accessed 16 Nov 2013).

⁶⁷ Cf. Weichert 2012a; *Europe vs. Facebook* 2012; *Europe vs. Facebook*, Complaint against Facebook Ireland Ltd. – 12 “Data Security”, 2011; Irish Data Protection Commissioner 2011).

Having regard to all these issues I want to analyse if the concerned data subjects are aware of what they have agreed to and if they actually act like Facebook's policy directs (e.g. obtain consent in the case of 'friend finder' and 'tagging' or using 'real names'). Furthermore I would like to know what the data subjects think about the controversies between existing legal entitlements and the way Facebook actually works. Finally new possibilities of performing informed consent in digital environments adequately will be discussed.

4. International State of Research

Scholars from a wide variety of disciplines have recognized the importance of research on social networking sites. It's not possible to discuss all social media studies in detail.

Some of the most important empirical inquiries, that are considered to be relevant to the present project, are *Wilson et al.*, *Hallinan et al.*, *Boyd & Hargittai*, *Phippen*, *Brandtzaeg & Lüders*, *Der Landesbeauftragte für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern*, *The Gallup Organization* and *TNS Opinion & Social*.⁶⁸

The literature review by *Wilson et al.* for example, claims to be the first major review devoted primarily to academic articles written about Facebook.⁶⁹ The project focused on high-quality empirical papers published in peer-reviewed academic journals or in conference proceedings. Wilson et al. ultimately found 412 relevant studies. The structuring of the literature resulted in the identification of five general categories that captured the major themes. These are: descriptive analysis of users (97 articles, 24%), motivations for using Facebook (78 articles, 19%), identity presentation (50 articles, 12%), the role of Facebook in social interactions (112 articles, 27%), and privacy and information disclosure (75 articles, 18%). A closer look reveals that the category on privacy and information disclosure mainly contains general questions, such as why people disclose personal information, which respondents disclose what kind of information, and what users think about privacy in the context of Facebook.

Other important data comes from a team of in-house Facebook researchers who have access to the full Facebook data set. In collaboration with researchers at the Università degli Studi di Milano, the Facebook research team produced two studies that examined 721 million Facebook users with a combined 69 billion friendships.⁷⁰ To date, these projects seem to be the largest social network studies ever released, and it is likely that these sample sizes are the largest in history.⁷¹ Nevertheless, it is important to note that these surveys primarily produced results on demographics and general user behaviour on Facebook. There is no survey that explicitly focuses on such critical privacy aspects as informed consent or other core data protection princi-

⁶⁸ *Wilson/Gosling/Graham*, A Review of Facebook Research in the Social Sciences, 2012; *Hallinan/ Friedewald/McCarthy*, Citizens' perceptions of data protection and privacy in Europe, 2012; *Boyd/Hargittai*, Facebook privacy settings: Who cares?, 2010; *Phippen*, Child Privacy Report, 2011; *Brandtzaeg/Lüders*, Privacy 2.0: personal and consumer protection in the new media reality, 2009; *Der Landesbeauftragte für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern*, 2011; *The Gallup Organisation*, Data Protection in the European Union. Citizens' perceptions, 2008; *TNS Opinion & Social*, Attitudes on Data Protection and Electronic Identity in the European Union, 2011.

⁶⁹ Cf. *Wilson/Gosling/Graham*, 2012.

⁷⁰ Cf. *Backstrom/Boldi/Rosa/Ugander/Vigna*, Four degrees of separation, 2011; ; *Backstrom*, Anatomy of Facebook 2011; *Ugander/Karrer/Backstrom/Marlow*, The anatomy of the Facebook social graph, 2011;

⁷¹ Cf. *Wilson/Gosling/Graham*, 2012.

ples. It is obvious that Facebook would not support the publication of critical socio-legal research about privacy and data protection issues, since their business strategy is based on the gathering and analysing of personalised information as a substantial resource of economic value creation in the digital age. For information on these aspects, we have to take a look at studies that do not originate from Facebook directly.

A meta-analysis with regard to public opinion surveys on data protection and privacy focused on EU citizens, for example, stems from *Hallinan et al.*⁷² According to the review, issues of data protection and privacy are increasingly significant at both the individual and societal levels. One of the main findings says that the public feels they have lost control over their data and that there are alarming enforcement and application problems. The public states a growing desire for clarity, solidification, and understanding of an environment perceived as complex and fluid. Despite the general uncertainty and the fact that most respondents state that disclosing personal information is a problematic issue for them, they also seem to accept the need to divulge increasing amounts of information. The overarching reason for this acceptance is the rather deterministic viewpoint that it is 'simply part of modern life'.⁷³

Another project is the *Oekonsult* survey.⁷⁴ It is a face-to-face survey conducted nationwide via pocket PCs in Austria, which addresses general questions about data protection and data security (n = 1,213). The study reports that, while 77% percent of the respondents are not familiar with data protection rules, the protection and integrity of personal information seems to be (extremely) important to 89% of the respondents. Only 28% of those questioned agreed with the statement that frequent warnings from privacy advocates against possible systematic abuse of personal data (e.g. health data, mobile phones, internet behaviour, etc.) are exaggerated, but 39% of the respondents are of the opinion that the 'transparent citizen' is a reality and fighting it is naive.

Boyd & Hargittai conducted a longitudinal survey on the subject of modifying privacy settings on Facebook, with a cohort of users around 18 years of age.⁷⁵ The first phase was conducted in spring 2009 (n = 1,115); the second in spring 2010 (n = 495). To avoid a possible bias the survey sample was compiled on paper and online. Unsurprisingly, they found that the more often the site is used, the more often the privacy settings are modified. Furthermore, women are much more likely to change their settings, suggesting that women are more actively seeking to

⁷² Cf. *Hallinan/Friedewald/McCarthy*, Citizens' perceptions of data protection and privacy in Europe, 2012.

⁷³ Cf. *Hallinan/Friedewald/McCarthy*, 2012.

⁷⁴ Cf. *Allwinger/Schillab*, Vertrauen der ÖsterreicherInnen in den Datenschutz, 2008.

⁷⁵ Cf. *Boyd/Hargittai*, Facebook privacy settings: Who cares?, 2010.

manage their privacy.⁷⁶ Similar, Lewis et al. (2008) found a student is significantly more likely to have a private profile if the student's friends have private profiles, the student is more active on Facebook, and the student is female.⁷⁷

A Survey conducted by *Andy Phippen* addresses the behaviour and attitudes of young people with regard to online technology and privacy.⁷⁸ The sample (n = 4,116) is focused on British primary school children (aged 9 to 11) and secondary school children (aged 14 to 19), and found that 60% of the respondents have not read the privacy policies of the web sites they use. Girls were more likely (44%) than boys (35%) to read the policy. When those who had not read the policy were asked why, there were a variety of responses. 32% said they did not know what a privacy policy was, while 23% said they did not know where to find it. A quarter felt the policies were too complicated, and another quarter did not feel it important. Interestingly, more secondary school respondents (44%) said the policies were too complicated, although more primary school children did not know what a privacy policy was (37%). However, the vast majority of respondents (85%) were of the opinion that social networks should have the strongest privacy settings by default and an even larger majority (94%) said that clear rules were needed to help with the removal of photos and videos posted without consent.

A report commissioned by the Norwegian Consumer Council conducted a questionnaire survey of 1,372 Norwegian Internet users and twelve qualitative interviews with regular Facebook users.⁷⁹ According to *Brandtzaeg & Lüders* about 73% of the 15–30 age group rarely or very rarely read user terms and conditions of websites before accepting them.⁸⁰ The tendency to read such terms increases with the age of the user. Only 4% of the 15–30 age group state that they do so on a regular basis. Nevertheless, 67% of Internet users are concerned about the consequences of sharing personal information on the Internet (the older the users, the deeper the concerns), and 94% state that it is important to maintain control of the personal information they publish on the Internet. The respondents to the qualitative interviews state that self-regulation is a key user strategy for reinforcing privacy. At the same time, many respondents state that they have less control of how they are represented, because other people on the network upload content and comments about them. The respondents know little about how Facebook utilises personal information for commercial purposes. Commercial utilisation of per-

⁷⁶ Cf. *Boyd/Hargittai*, 2010.

⁷⁷ Cf. *Lewis/Kaufman/Christakis*, The taste for privacy: An analysis of college student privacy settings in an online social network, 2008.

⁷⁸ Cf. *Phippen*, Child Privacy Report, 2011.

⁷⁹ Cf. *Brandtzaeg/Lüders*, Privacy 2.0: personal and consumer protection in the new media reality, 2009.

⁸⁰ Cf. *Brandtzaeg/Lüders*, 2009.

sonal data is considered unclear and very unlikely. Users do not understand Facebook's terms and conditions, and when they do take the time to read them, they can make little – if any – sense of them.

Another study was conducted in 2011 by the Commissioner for Data Protection from Mecklenburg-Vorpommern in Germany.⁸¹ The survey focused on the use of social networking sites in general; the target group consisted of pupils from Mecklenburg-Vorpommern from 8 to 21 years of age (n = 1,398). The survey found that 45% of the male participants and 33% of the female participants did not read the terms of use, the privacy policy, or the code of conduct. In addition, 56% of respondents use no pseudonym but their real name. According to the survey, the visibility of users' profile elements is as follows: friends list (invisible 5%), photo album (invisible 6%), real name (invisible 15%), date of birth (invisible 19%), phone number (invisible 41%), and private residential address (invisible 42%).

Christian Fuchs conducted another an online survey in Salzburg.⁸² He carried out interviews focused on students using studiVZ, Facebook, and MySpace (n= 702).⁸³ The results show that only 14% of the respondents read the terms of use of the sites in question almost entirely or completely. In addition, so-called knowledge questions were asked, which showed that 94% of the Facebook users in the survey answered correctly that Facebook is allowed to collect and store data on their information behaviour. Only 20% knew that Facebook is allowed to reuse and resell personal data. 55% knew that Facebook's advertising clients are allowed to gather data on the information behaviour of users, and only 33% answered correctly that Facebook is always allowed to send them personalized advertising. By combining the answers to these four questions, Fuchs calculated a so-called 'surveillance knowledge index'. The index implies that only 34% of the Facebook users had a good or high degree of knowledge about what Facebook is allowed to do with their data. Bivariate correlations furthermore show slightly negative connections between female respondents and the 'surveillance knowledge index' (r = -0, 203). This gender-specific pattern can be found in various other studies.

Another set of data sources that address data protection principles to some extent are the Eurobarometer Surveys.⁸⁴ The Flash Survey intended to investigate how aware the citizens of EU

⁸¹ Cf. *Der Landesbeauftragte für Datenschutz und Informationsfreiheit Mecklenburg-Vorpommern*, Die Nutzung sozialer Netzwerke im Internet unter Datenschutz-Gesichtspunkten in Mecklenburg-Vorpommern, 2011.

⁸² Cf. *Fuchs*, Social Networking Sites and the Surveillance Society, 2009.

⁸³ Cf. *Die Zeit Online* (7 August 2012): Ein Tüv für AGB will für schnellen Überblick sorgen, URL: <http://www.zeit.de/digital/internet/2012-08/terms-of-service-did-not-read> (accessed 10 January 2013).

⁸⁴ Cf. *The Gallup Organisation*, Data Protection in the European Union. Citizens' perceptions, Flash Eurobarometer 225, 2008; *TNS Opinion & Social*, Special Eurobarometer 359, 2011.

Member States are about their right to data protection.⁸⁵ Basically, it was asked whether the individuals actually know that their consent is required for the uses of their data. A large majority of the respondents (81%) chose correctly when saying that this is the case. 61% of respondents answered that they were entitled to compensation if the privacy of their data was violated, and 59% knew that they could access and check personal data about them held by organisations. In regard to demographic characteristics, it can be said that male, young, and highly-educated respondents were the most likely to know all of their rights regarding the use and abuse of personal data.

Similar questions were examined in the Special Eurobarometer Survey 359.⁸⁶ Respondents who use the Internet were asked, for example, whether they usually read privacy statements on the Internet. Close to six in ten respondents (58%) said they do. Those respondents who usually do not read privacy statements on the Internet were asked about their reasons for not doing so. Four in ten think it is sufficient for them to see that websites have a privacy policy (41%); around a quarter believe the law will protect them in any case (27%), or conversely, that the websites will not honour the privacy statements anyway (24%). A socio-demographic breakdown demonstrates that respondents who left school at age 15 or younger are most likely to believe they are protected by the law in any case. Respondents who use social networking or sharing sites were then asked whether these sites sufficiently inform their users about the possible consequences of disclosing personal information; almost half of the respondents said they are informed (49%), while an almost equal proportion said that they are not (46%). However, we have to note that this is only a subjective assessment by the concerned, and not an actual measurement of their knowledge and awareness.⁸⁷

However, the typical standard study focuses on information disclosure by users, asking for the reasons why people put their personal information online and analyzing the culture of 'sharing'.⁸⁸

⁸⁵ Cf. *The Gallup Organisation*, Flash Eurobarometer 225, 2008.

⁸⁶ Cf. *TNS Opinion & Social*, Special Eurobarometer Survey 359, 2011.

⁸⁷ For further studies on privacy, Cf. *Bennett/Raab*, 2006: 62 et seqq.; See also *epic.org*, Public Opinion on Privacy, (URL: <http://epic.org/privacy/survey/>), and the Reference List of *Roger Clarke*: Surveys of Privacy Attitudes, (URL: <http://www.rogerclarke.com/DV/Surveys.html>) (accessed 20 January 2013).

⁸⁸ See *Acquisti/Gross*, Imagined Communities: Awareness, Information Sharing, and Privacy on the Facebook, 2006; *Benkel*, Die Strategie der Sichtbarmachung. Zur Selbstdarstellungslogik bei Facebook, 2012; *Boyd/Ellison*, Social network sites: Definition, history, and scholarship, 2007; *Boyd/Hargittai* 2010; *Debatin/Lovejoy/Horn/Hughes*, Facebook and online privacy, 2009; *Dwyer et al.* 2007; *Livingstone* 2008; *Lewis et al.* 2008;

Lusoli/Bacigalupo/Lupiañez/Andrade/Monteleone/Maghiros, Pan-European Survey of Practices, Attitudes and Policy Preferences as regards Personal Identity Data Management, 2012; *Poller/Henkel/Küch*, Privatsphären-

If data protection principles and paragraphs are addressed at all, they are only discussed superficially and without any specific reference to Facebook, so that no legally binding statement can be made. In addition, a series of studies only focus on children or students. Thus there remain several conceptual and methodological issues related to privacy, data protection and consumer protection which have not been addressed and analysed accurately. Little attention has been paid to the influencing social factors actually involved in giving one's consent and the subjective relevance of data protection principles in concrete regard to Facebook.⁸⁹ If the issue of informed consent is treated, the analysis usually does not go beyond the question of whether the policy has been read. This shows a lack of analytical depth. It can be said that even despite the growing literature on social networking sites, little proper attention has been paid to the actual enforcement of informed consent and other core data protection principles related to the use of Facebook in everyday routines.

schutz in Soziale-Netzwerke-Plattformen, 2008; Zurawski/Schmidt/Stegbauer, Phänomen „Facebook“, 2012; Sützl et al. 2012; Krasnova/Wenninger/Widjaja/Buxmann, Envy on Facebook, 2013.

⁸⁹ Cf. Miller, Tales from Facebook, 2011; Leistert/Röhle, Generation Facebook, 2012.

5. Innovation and the Breaking of New Ground

There is currently a distinctive discourse on privacy, surveillance and data protection going on in Europe. The debate has recently intensified due to the Snowden revelations but also due to the current formulation of the new European General Data Protection Regulation. The presented subject undoubtedly enjoys great significance at this time. With regard to Facebook, this is especially the case in the German-speaking area. Reference shall be made here, for example, to the Article 29 Working Party⁹⁰ or the German Data Protection Commissions of Hamburg, Schleswig-Holstein and Mecklenburg-Vorpommern⁹¹, but also to the Austrian Data Protection Initiative Europe vs. Facebook which came up with 22 complaints against Facebook Ireland.⁹² As media reports show, the case became quite famous and raised a range of serious questions about the actual enforceability of current data protection laws in the digital age.⁹³

This discourse obviously lacks empirical research, scientific reflection, and differentiated examination. The present study intends to provide these important data on the very forefront by performing sophisticated socio-legal analysis on the abovementioned issue. I will perform an interdisciplinary in-depth analysis based on different methodological procedures focused on significant legal paragraphs and privacy principles.

There is strong evidence for the need of interdisciplinary scientific research on privacy and data protection issues with regard to Facebook.⁹⁴ An indicative project by *Simon Davies* surveyed 181 privacy specialists from 19 countries to identify the key trends that are likely to

⁹⁰ Cf. *Article 29 Working Party*, URL: http://ec.europa.eu/justice/data-protection/article-29/index_en.htm (accessed 16 July 2013).

⁹¹ Cf. *Das Unabhängige Landeszentrum für Datenschutz Schleswig-Holstein*, URL: <https://www.datenschutzzentrum.de/facebook/index.html> (accessed 16 July 2013); *Der Hamburgische Beauftragte für Datenschutz und Informationsfreiheit*, URL: http://www.datenschutz-hamburg.de/index.php?no_cache=1&id=129 (Access 16 Nov 2013).

⁹² Cf. *Europe vs. Facebook*, URL: <http://www.europe-v-facebook.org/DE/de.html> (accessed 16.03.2013).

⁹³ Cf. *The New York Times* (05.02. 2012): *Austrian Law Student Faces Down Facebook*, URL: <http://www.nytimes.com/2012/02/06/technology/06iht-rawdata06.html> (accessed 16 Nov 2013).

Die Zeit (17.10. 2012): "Facebook tut Dinge, die nicht akzeptabel sind", URL: <http://www.zeit.de/digital/datenschutz/2012-10/facebook-friedrich-schrems> (Access 16 Nov 2013).

Le Monde (24 October 2011): *Facebook accusé de conserver des données effacées et de créer des "profils fantômes"* URL: http://www.lemonde.fr/technologies/article/2011/10/24/facebook-accuse-de-conserver-des-donnees-effacees-et-de-creer-des-profils-fantomes_1592814_651865.html (accessed 16 Nov 2013).

La Stampa (20.10.2011): *Privacy, uno studente austriaco sfida Facebook*, URL: http://www.lastampa.it/2011/10/20/tecnologia/privacy-uno-studente-austriaco-sfida-facebook_fMSHTgTepRWN9oE8ZcX7TK/pagina.html (accessed 16 July 2013).

The Independent (21.10. 2011): *Student campaigns against Facebook data collection*, URL: <http://www.independent.co.uk/life-style/gadgets-and-tech/news/student-campaigns-against-facebook-data-collection-2374072.html> (accessed 16 Nov 2013).

⁹⁴ Cf. Cf. *Wilson/Gosling/Graham*, 2012.

dominate the privacy landscape over the coming year.⁹⁵ The experts identified 'triggers' that would permeate the spectrum and act as a lightning rod for public concern, and perceived the principle of informed consent as a key issue. Furthermore, Davies explicitly states a broadening of concern over Facebook, which touches a wide range of privacy issues.⁹⁶ These include, for example: governmental surveillance and data access by security agencies, the European data protection reform, online tracking and location based services, data aggregation and the vision of Big Data, as well as smartphone apps or apps related to mobile devices. Finally, Facebook's work on the 'next generation' of targeted advertising and direct marketing is one reason why it reached the Red List of issues.

Although the proposed study is dedicated to Facebook, the investigated issue goes far beyond and affects various other internet and e-commerce services. The project is about awareness, trust and the confidence of users/consumers in an environment of uncertainty and rapid change. Building trust in the online environment is key to economic development. Lack of trust makes consumers hesitate to buy online and adopt new services. These risks are slowing down the development of innovative uses of new technologies. Personal data protection therefore plays a central role in the Digital Agenda for Europe.⁹⁷ The present project will supply the discourse with much-needed empirical data on international scientific standards. Based on these considerations, an argument could be made for a technical (software-based) review of the current approach and the strengthening of legitimate legal regulators. Last but not least, this is an issue of consumer-protection, the enforceability of data protection rights and the empirical analysis of the need for a reorientation of technological communication standards. The project examines possible answers and alternate strategies of informed consent and the use of standard contracts in prospective digital environments (see also Terms of Service - Didn't read; Privacy by Design, Privacy-enhancing Technologies, Open Code, Open Network, Post Privacy).⁹⁸

⁹⁵ Cf. *Davies*, Predictions for Privacy, 2013.

⁹⁶ Cf. *ibid.* 2013.

⁹⁷ Cf. Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, EUROPEAN COMMISSION, Brussels, 25.1.2012.

⁹⁸ Cf. *Terms of Service - Didn't Read*, URL: <http://tosdr.org/> (accessed 16 March 2013). Cf. *Diaspora*; Cf. *A Standards-based, Open and Privacy-aware Social Web*, URL: <http://www.w3.org/2005/Incubator/socialweb/XGR-socialweb-20101206/> (accessed 20 Nov 2013).

6. Empirical Design and Research Methods

6.1. User Interface Analysis

The empirical design of the research project is based on the epistemological approach of triangulation and mixed methods.⁹⁹ In a first step, I will carry out **user interface analysis** (screenshot analysis) as a non-reactive procedure.¹⁰⁰ The analysis will focus on the composition of the website and on practical aspects of its functioning (page layout and design, used colours and font size, number of clicks to specific features or information). The non-reactive analysis will also focus on Facebooks policy and Terms of Use (document analysis on aspects like length of the text, structure, wording). The user interface and policy are seen as (legal) artefact of the virtual environment.¹⁰¹ By doing so I provide an analytic disclosure of the content and structure of the website. Thus the inherent communication and information flow that the users are faced with will be revealed systematically.

6.2. Qualitative face-to-face Interviews

Parallel to and in combination with the document and screenshot analysis I will conduct a series of so-called **qualitative, problem-centred, semi-structured, guideline-based face-to-face interviews**.¹⁰² Such interviews are used to discuss precisely defined aspects and topics, but due to the open structuring of the conversation, they also give place for individual views of the respondents in sufficient way. So, the qualitative interviews will also consider contextual aspects of the practical use of Facebook in everyday life. The information obtained from the interviews will be transcribed and analysed content based.¹⁰³ The actual extent of the qualitative interviews is based on the ensuring of saturation and dense description of the social phenomenon.¹⁰⁴ However the number of required interviews is estimated to be about twenty.¹⁰⁵ The sample will include heavy users, average users and non-users, as well as persons of different age (teens vs. retired persons), different sex and different educational background. The se-

⁹⁹ Cf. *Flick*, Triangulation, 2011; *Bryman*, Quantity and Quality in Social Research, 1988; *Bryman*, Quantitative and Qualitative Research, 1992; *Tashakkori/Teddlie*, Handbook of Mixed Methods in Social & Behavioral Research, 2003.

¹⁰⁰ Cf. *De Souza e Silva/Frith*, Mobile Interfaces in Public Spaces, 2012.

¹⁰¹ Cf. *Bohnsack*, The Interpretation of Pictures and the Documentary Method, 2008; *Trepte*, Crossmedia, 2005; *Prior*, Using Documents in Social Research, 2003; *Scott*, A Matter of Record - Documentary Sources in Social Research, 1990; *Wolff*, Dokumenten- und Aktenanalyse, 2000; see also *Europe vs. Facebook*, Complaint against Facebook Ireland Ltd. – 08 'Consent and Privacy Policy'; Attachments.

¹⁰² Cf. *Flick* 2007; *Froschauer/Lueger*, Das qualitative Interview, 2003; *Keuneke*, Qualitative Interview, 2005.

¹⁰³ Cf. *Mayring*, Qualitative Content Analysis, 2000.

¹⁰⁴ Cf. *Glaser/Strauss*, Grounded Theory, 1998; *Geertz*, Dichte Beschreibung, 1983.

¹⁰⁵ Cf. *Baker/Edwards*, How many qualitative interviews is enough, 2012.

lection of the interview partners, as well as the formulation of the problem, will partly rely on the strategy of theoretical sampling.¹⁰⁶ This means that some aspects like the selection of respondents as well as the exact wording of the questions will be adjusted and adapted methodologically on the basis of the previous findings. For easier understanding, it is planned to use a computer in parts of the conversation in order to discuss special functions online (see the functional screen shot analysis below). The gathered information will give important insights into the subjective relevance of the aforementioned data protection principles and the modes of argumentation of the concerned.

6.3. Representative Online Survey

The qualitative analysis furthermore provides essential information for the final design of the quantitative questionnaire and the subsequent interpretation of the statistical data of the **representative online survey throughout Austria**, as the final empirical step. The aim is a sample size of $n = 2,000$, which will be split up into a test group (actual Facebook users) and a comparison group (web active people who do not use Facebook). Such a design allows the analytical contrasting of data. The goal of the online survey is to gather representative information about the aforementioned data protection principles and their importance to the users/citizens. Besides the principle of informed consent, the main issues are the right to be forgotten, the finality principle, the right of access, the right of confidentiality of communication, the use of pseudonyms, and the opt-out issue. I carry out descriptive statistics as well as correlation and factor analysis with SPSS. The degree of awareness and knowledge of the privacy principles will be evaluated by computing an index.¹⁰⁷ I also survey the frequency of use, the number of 'friends' and other socio-demographic characteristics and set them in relation to the main research questions.

All empirical steps will be matched and related to each other methodologically and focus on the abovementioned data protection issues. Qualitative research therefore supports the statistical methods and vice versa. This especially in terms of pre-testing and data interpretation. The qualitative interviews will primarily focus on the subjective view of the concerned users, whereas the statistical part is primarily structured by the assumptions of the researcher. In the

¹⁰⁶ Cf. Glaser/Strauss, 1998.

¹⁰⁷ Cf. Diekmann, Empirische Sozialforschung, 1995; Bortz, Statistik für Human- und Sozialwissenschaftler, 2005; Fuchs, Social Networking Sites and the Surveillance Society, 2009.

end the combination of these methods will provide a more reliable and complete picture of the phenomenon under investigation.¹⁰⁸

6.4. Sampling on Facebook

As the literature review reveals, a common problem of online surveys on Facebook is ensuring representativeness. That is why several projects only focus on selected non-representative sub-populations like students. The main reason for this is that the actual population of users and their demographic distribution is not known, since information provided by the users, like age, gender, or residence, is not true in every case. In addition, Facebook has no economic incentive to disclose known data on the distribution of active profiles.¹⁰⁹ Personal investigation has shown that market research agencies reconstruct the user population of Facebook by forefront surveys.¹¹⁰ Representative telephone surveys based on population data of all web-active people in a region include the question whether the respondents use Facebook or not; thus, the distribution of the users is reconstructed manually. The population data is controlled for accuracy in monthly or quarterly surveys. Based on this population data, representative online surveys are possible in a second step. Unlike phone books or postal address lists, there are no central registers of e-mail addresses which can be used to draw samples online. Therefore research institutes specialising in social media create their own pool of web-active respondents. In the case of the Marketagent.com online reSEARCH GmbH, the address pool comprises around 480,000 contacts. Through a variety of different measures a wide circle of web-active people is recruited. Respondents are addressed passively as well as actively through several activities and tied with a bonus system. The actual sampling is done by computer on the principle of random selection, with certain quotas defined in advance. In our case, the quotas (age, gender, highest level of education, and federal state) are based on the previously reconstructed characteristics of the Austrian Facebook population. By doing so, the online survey method ensures representative data and methodological consistency within the survey topic. Another issue is the age of respondents. Facebook officially allows users as young as 13 years of age, but due to the ESOMAR Directive, the present study cannot ask teenagers under 14.¹¹¹ Younger people (under 14 years) can be questioned only with consent or in the presence of their parents. This means

¹⁰⁸ Cf. Bryman 1988, 1992; Cf. Flick 2011.

¹⁰⁹ Cf. E-mail request at the German social media marketing agency *allfacebook.de* (24 April 2013); E-mail request at the Swiss social media consultant Thomas Hutter (22 April 2013).

¹¹⁰ Personal requests at: www.meinungsraum.at; www.marketagent.com; www.digitalaffairs.at; www.socialmediaradar.at; www.peterhajek.com (20 June 2013).

¹¹¹ Cf. ESOMAR, Interviewing Children and Young People, 2009.

that scientific surveys are subject to stricter guidelines than data processing by Facebook. Both the aforementioned need for reconstruction of the actual population as well as the binding of scientific surveys to the consent of respondents under 14 years of age reflect the relevance of the present research project.

7. References

- Acquisti, Alessandro; Gross, Ralph (2006): Imagined Communities: Awareness, Information Sharing, and Privacy on the Facebook. In Proceedings of 6th Workshop on Privacy Enhancing Technologies; Golle, P., Danezis, G., Eds.; Robinson College: Cambridge/UK, pp. 36 – 58.
- Allwinger Kristin; Schillhab, Joshi (2008): Vertrauen der ÖsterreicherInnen in den Datenschutz, Juli 2008, <http://www.oekonsult.eu/datensicherheit2008.pdf>.
- Andrejevic, Mark (2009): Critical Media Studies 2.0: an interactive upgrade. Interactions: Studies in Communication and Culture Volume 1 Number , pp. 35 – 51.
- Arndt, Heinz Wolfgang (1949): 'The Cult of Privacy', Australian Quartely 21: pp. 69 – 71.
- Assion, Simon (9. Mai 2014): Was sagt die Rechtsprechung zu Chilling Effects?, Telemedicus. URL: <https://www.telemedicus.info/article/2773-Was-sagt-die-Rechtsprechung-zu-Chilling-Effects.html> (accessed 20 May 2015).
- Backstrom, Lars; Boldi, Paolo; Rosa, Marco; Ugander, Johan; Vigna, Sebastiano (2011): Four degrees of separation. URL: <http://arxiv.org/abs/1111.4570> (accessed 20 July 2013).
- Backstrom, Lars (2011): Anatomy of Facebook. Palo Alto, CA: Facebook. URL: <http://arxiv.org/abs/1111.4503> (accessed 20 July 2013).
- Baker, S. Elsie; Edwards, Rosalind (2012): How many qualitative interviews is enough. Discussion Paper. NCRM. URL: http://eprints.ncrm.ac.uk/2273/4/how_many_interviews.pdf (accessed 2014.10.01.)
- Beer, David; Burrows, Roger (2007): Sociology and, of and in Web 2.0: Some Initial Considerations'. Sociological Research Online 12 (5).
- Benkel, Thorsten (2012): Die Strategie der Sichtbarmachung. Zur Selbstdarstellungslogik bei Facebook. In: Zurawski, Nils; Schmidt, Jan-Hinrik; Stegbauer, Christian (Hrsg.): Phänomen „Facebook“. Sonderausgabe von kommunikation@gesellschaft, Jg. 13, Beitrag 3. Online-Publikation: <http://nbnresolving.de/nbn:de:0228-201213038> (accessed 20 Dec 2013).
- Bennett, Colin J.; Raab, Charles D. (2006): The Governance of Privacy. Policy Instruments in Global Perspective. The MIT Press. Cambridge, Massachusetts, London, England.
- Berka, Walter (2012): Das Grundrecht auf Datenschutz im Spannungsfeld zwischen Freiheit und Sicherheit. 18. ÖJT. Band I/I, Manzsche Verlags- und Universitätsbuchhandlung, Wien.
- Bohnsack, Ralf (2008): The Interpretation of Pictures and the Documentary Method, Forum: Qualitative Social Research (ISSN 1438-5627), Volume 9, No. 3, Art. 26, FQS

- Bortz, Jürgen (2005): Statistik für Human- und Sozialwissenschaftler, 6. Auflage, Springer Verlag.
- Boyd, Danah; Hargittai, Eszter (2010): Facebook privacy settings: Who cares? In: First Monday, Volume 15, Number 8 - 2 August 2010.
- Boyd, Danah (2007): 'The Significance of Social Software', in: BlogTalks Reloaded, edited by Thomas N. Burg, Nordstedt; Books on Demand; pp. 15 – 30.
- Boyd, Danah; Ellison, Nicole (2007): Social network sites: Definition, history, and scholarship; In: Journal of Computer–Mediated Communication, volume 13, number 1; URL: <http://jcmc.indiana.edu/vol13/issue1/boyd.ellison.html> (accessed 20 Dec 2013).
- Brandtzaeg, Peter Baw; Lüders, Marika (2009): Privacy 2.0: personal and consumer protection in the new media reality. SINTEF Report No. A12979. The Norwegian Consumer Council.
- Bryman, Alan (1988): Quantity and Quality in Social Research. London: Unwin Hyman.
- Bryman, Alan (1992): Quantitative and Qualitative Research: Further Reflections on their Integration. In: Julia Brannen (ed.): Mixing Methods: Quantitative and Qualitative Research. Aldershot: Avebury, S. 57-80.
- Burk, Dan L. (2007): Privacy and Property in the Global Datasphere. In: Technology Ethics: Cultural Perspectives; Hongladarom, S., Ess, C., Eds.; Idea Group Reference: Hershey, Panama,; pp. 94 – 107.
- Čas, Johann; Peissl, Walter (2006): Datenhandel – ein Geschäft wie jedes andere?, in: Jeanette Hofmann (Hg.) Wissen und Eigentum. Geschichte, Recht und Ökonomie stoffloser Güter (Bonn: Bundeszentrale für politische Bildung); pp. 263 – 278.
- Clarke, Roger (1988): Information Technology and Dataveillance. Communications of the ACM 31(5): pp. 498 – 512.
- Clarke, Roger (1994): Information Technology. Weapon of Authoritarianism or Tool of Democracy? XamaX Consultancy Pty Ltd, Canberra, Department of Computer Science, Australian National University, Paper presented at the IFIP World Congress, Hamburg, September 1994.
- Davies, Simon (2013): Predictions for Privacy A report on the issues and trends that will dominate the privacy landscape in 2013, Published by LSE Enterprise, London School of Economics.
- Debatin, Bernhard; Lovejoy, Jennette P.; Horn, Ann–Kathrin and Hughes, Brittany N. (2009): Facebook and online privacy: Attitudes, behaviors, and unintended consequences; In: Journal of Computer–Mediated Communication, volume 15, number 1, pp. 83 – 108.

- De Souza e Silva, Adriana; Frith, Jordan (2012): *Mobile Interfaces in Public Spaces. Locational Privacy, Control and Urban Sociability*, Routledge, New York and London.
- Der Landesbeauftragte für Datenschutz und Informationsfreiheit in Mecklenburg-Vorpommern (2011): *Die Nutzung sozialer Netzwerke im Internet unter Datenschutz-Gesichtspunkten in Mecklenburg-Vorpommern. Ergebnisse der Online-Umfrage unter Schülerinnen und Schülern im Alter von 8 bis 21 Jahren.*
- Diekmann, Andreas (1995): *Empirische Sozialforschung. Grundlagen, Methoden Anwendungen.* Rowohlt Taschenbuch Verlag, Reinbek bei Hamburg.
- Dwyer, Catherine; Hiltz, Starr Roxanne; Passerini, Katia (2007): *Trust and privacy concern within social networking sites: A comparison of Facebook and MySpace.* Proceedings of the Thirteenth Americas Conference on Information Systems (August 2007), at.
URL: "<http://aisel.aisnet.org/amcis2007/339/>" (accessed 12 July 2013).
- Ennöckl, Daniel (2014): *Der Schutz der Privatsphäre in der elektronischen Datenverarbeitung, Habilitationsschrift, Schriftenreihe Forschung aus Staat und Recht, Verlag Österreich.*
- ESOMAR (2009): *Interviewing Children and Young People, ESOMAR World Research Codes & Guidelines*, URL: <http://www.esomar.org/knowledge-and-standards/codes-and-guidelines.php>. (accessed 12 Dec 2013).
- Etzioni, Amitai (1999): *The Limits of Privacy*; Basic Books: New York, NY, USA.
- Europe vs. Facebook (2011): *Legal Procedure against "Facebook Ireland Limited"*, URL: <http://www.europe-v-facebook.org/EN/Complaints/complaints.html> (accessed 12 July 2013).
- Europe vs. Facebook (2012): *europe -v-facebook.org, Response to 'Audit' by the Irish Office of the Data Protection Commissioner on "Facebook Ireland Ltd., Vienna, December 4th, 2012.* URL: <http://www.europe-v-facebook.org/report.pdf>
- Faden, Ruth R.; Beauchamp, Tom L. (1986): *A History and Theory of Informed Consent*; New York: Oxford University Press.
- Federal Trade Commission, *Fair Information Practice Principles* (Last Modified: Friday, November 23, 2012), URL: <http://www.ftc.gov/reports/privacy3/fairinfo.shtm> (accessed 30 July 2013).
- Flick, Uwe (2007): *Qualitative Sozialforschung. Eine Einführung*, Reinbek: Rowohlt.
- Flick, Uwe (2011): *Triangulation, Eine Einführung*, 3. aktualisierte Auflage, VS Verlag für Sozialwissenschaften | Springer Fachmedien Wiesbaden.
- Froschauer, Ulrike; Lueger, Manfred (2003): *Das qualitative Interview.* WUV, Wien.

- Fuchs, Christian (2009): Social Networking Sites and the Surveillance Society. A Critical Case Study of the Usage of studiVZ, Facebook, and MySpace by Students in Salzburg in the Context of Electronic Surveillance. Forschungsgruppe - Unified Theory of Information” – Verein zur Förderung der Integration der Informationswissenschaften. Salzburg/Wien.
- Fuchs, Christian (2011a): New Media, Web 2.0 and Surveillance; In: Sociology Compass 5/2 (2011); pp. 134 – 147.
- Fuchs, Christian (2011b): An Alternative View of Privacy on Facebook; Information 2011, 2; pp.140 – 165.
- Fuchs, Christian (2014): Social Media. a critical introduction. Sage Publications Ltd., London.
- Gandy, Oscar (1993): The panoptic sort. A political economy of personal information; Boulder.
- Geertz, Clifford (1983b): Dichte Beschreibung. Frankfurt am Main. Suhrkamp.
- Glaser, Barney G.; Strauss, Anselm. L. (1998): Grounded Theory: Strategien qualitativer Forschung; Bern, Huber.
- Graf, Georg (2013): Kommentierung von § 879 ABGB, in Kletecka, Andreas; Schauer, Martin (Hrsg): ABGB-ON, Manz, Wien.
- Gorovitz, Samuel (1988): Informed Consent and Patient Autonomy; In: Callahan, Joan C., ed., Ethical Issues in Professional Life. New York: Oxford University Press, pp. 182 – 187.
- Habermas, Jürgen (1962): Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft. Suhrkamp Taschenbuch Wissenschaft 891.
- Hallinan, Dara; Friedewald, Michael; McCarthy, Paul (2012): Citizens' perceptions of data protection and privacy in Europe, in: Computer Law & Security Review, Elsevier, 28 (2012); pp. 263 – 272.
- Hongladarom, Soraj (2007): Analysis and Justification of Privacy from a Buddhist Perspective. In Technology Ethics: Cultural Perspectives; Hongladarom, S., Ess, C., (Eds.); Idea Group Reference: Hershey, Panama; pp. 108 – 122.
- Hull, Gordon; Lipford, Heather Richter; Latulipe, Celine (2011): Contextual gaps: privacy issues on Facebook. Ethics Inf Technol 13:289-302, Springer Science + Business Media B.V.
- Jahnel, Dietmar (2006): Das Grundrecht auf Datenschutz, in: Akyürek, Metin et al. (Hrsg), Staat und Recht in europäischer Perspektive, Festschrift für Heinz Schäffer, Wien: Manz, München: Beck.
- Jahnel, Dietmar (2010): Handbuch Datenschutzrecht: Grundrechte auf Datenschutz, Zulässigkeitsprüfung, Betroffenenrechte, Rechtsschutz.

- Keuneke, Susanne (2005): Qualitatives Interview, in: Mikos, Lothar; Wegener, Claudia (Hrsg.): Qualitative Medienforschung. Ein Handbuch. UVK Verlagsgesellschaft, Konstanz; pp. 254-267.
- Khakzadeh-Leiler, Lamiss (2011): Die Grundrechte in der Judikatur des Obersten Gerichtshofs, Forschungen aus Staat und Recht 161, SpringerWienNewYork.
- Knyrim, Rainer (2008): Datenschutzrechtliche Zustimmungserklärung richtig formulieren und platzieren, in: Knyrim, Rainer; Leitner, Max; Perner, Stefan; Riss, Olaf (Hrsg), Aktuelles AGB-Recht, Manz Verlag, Wien, S. 133-154.
- Krasnova, Hanna; Wenninger, Helena; Widjaja, Thomas; Buxmann; Peter (2013): Envy on Facebook: A Hidden Threat to Users' Life Satisfaction?, In: Proceedings of the 11th International Conference on Wirtschaftsinformatik, 27th February – 01st March 2013, Leipzig, Germany.
- Krejci, Heinz (2000): Kommentierung von § 879 ABGB, in Rummel, Peter (Hrsg): Kommentar zum Allgemeinen bürgerlichen Gesetzbuch, Manz, Wien.
- Leistert, Oliver; Röhle, Theo (2012): Generation Facebook - Über das Leben im Social Net. transkript.
- Leitner, Max (2011):Transparenzgebot, Privatautonomie und Auslegung, Juristische Blätter 133, Springer-Verlag, Wien. S. 428-436.
- Lessig, Lawrence (2006): Code - Version 2.0; Basic Books, New York.
- Lewis, Kevin; Kaufman, Jason; Christakis, Nicholas (2008): The taste for privacy: An analysis of college student privacy settings in an online social network; In: Journal of Computer-Mediated Communication, volume 14, number 1; pp. 79 – 100.
- Lin, Daniel; Loui, Michael C. (1998): Taking the Byte Out of Cookies: Privacy, Consent, and the Web; In: Policy'98, Privacy Issues, Computers and Society, June 1998, pp. 39 – 51.
- Livingstone, Sonia (2008): Taking Risky Opportunities in Youthful Content Creation: Teenagers' Use of Social Networking Sites for Intimacy, Privacy and Self-Expression. New Media Soc. 2008, 10; pp. 393 – 411.
- Lusoli, Wainer; Bacigalupo, Margherita; Lupiañez, Francisco; Andrade, Norberto; Monteleone, Shara; Maghiros, Ioannis (2012): Pan-European Survey of Practices, Attitudes and Policy Preferences as regards Personal Identity Data Management. Report EUR 25295 EN, JRC Scientific and Policy Reports, European Commission.
- Lyon, David (1994): The Electronic Eye, The Rise of Surveillance Society; Polity: Cambridge, UK.

- Lyon, David (2003): *Surveillance as Social Sorting. Privacy, Risk and Digital Discrimination*. Routledge, London and NY.
- Marx, Gary T. (2002): What's New About the "New Surveillance"? Classifying for Change and Continuity, in: *Surveillance & Society*, 1 (1): pp. 9 – 29.
- Mayer-Schönberger, Viktor; Cukier, Kenneth (2013): *Big Data. A Revolution That Will Transform How We Live, Work and Think*. John Murray (Publishers).
- Mayring, Philipp (2000): *Qualitative Content Analysis*. Forum: Qualitative Social Research (FQS), On-line Journal.
- Miller, Daniel (2011): *Tales from Facebook*. Polity Books.
- Nissenbaum, Helen (2004): Privacy as contextual integrity. *Washington Law Review* 79, pp. 101–139.
- Nissenbaum, Helen (2010): *Privacy in Context*; Standford Law Books; Standford, CA, USA, 2010.
- Papacharissi, Zizi; Fernback, Jan (2005): Online Privacy and Consumer Protection: An Analysis of Portal Privacy Statements. *Journal of Broadcasting & Electronic Media* 49 (3), 2005, pp. 259 – 281.
- Peissl, Walter (2003): *Privacy. Ein Grundrecht mit Ablaufdatum? Interdisziplinäre Beiträge zur Grundrechtsdebatte*. Verlag der Österreichischen Akademie der Wissenschaften.
- Phippen, Andy (2011): *Child Privacy Report. Young people's use of social technology and their attitudes toward data Protection*. The i in online & Plymouth Business School, University of Plymouth.
- Poller, Andreas; Henkel, Thorsten; Küch, Oliver (2008): *Privatsphärenschutz in Soziale-Netzwerke-Plattformen*. FraunhoferInstitut für Sichere Informationstechnologie SIT, Darmstadt (www.sit.fraunhofer.de).
- Posner, Richard (1978): An Economic Theory of Privacy; In: *Regulation*, May/June, pp. 19 – 26.
- Prior, Lindsay (2003): *Using Documents in Social Research*. London: Sage.
- Organisation for Economic Co-operation and Development (OECD) (1981): *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, OECD, Paris.
- Quinn, Michael (2006): *Ethics for the Information Age*; Pearson: Boston, MA, USA.
- Radin, Margaret Jane (2013): *Boilerplate: the fine print, vanishing rights and the rule of law*. Princeton University Press. New Jersey; Oxfordshire.
- Reichert, Ramòn (2014): *Big Data. Analysen zum digitalen Wandel von Wissen, Macht und Ökonomie*. Transcript Verlag, Bielefeld.

- Rössler, Beate (2001): Der Wert des Privaten. Suhrkamp Taschenbuch, Frankfurt am Main.
- Scott, John (1990): A Matter of Record - Documentary Sources in Social Research. Cambridge: Polity.
- Schoeman, Ferdinand D. (1984): Privacy: Philosophical Dimensions of the Literature, In: Philosophical Dimensions of Privacy; Schoeman, F.D., Ed.; Cambridge University Press: Cambridge, MA, USA; pp. 156 – 202.
- Schrems, Max (2011): Facebook: Überwachung auf "freiwilliger" Basis? juridikum. zeitschrift für kritik | recht | gesellschaft. Heft 4/2011. Verlag Österreich.
- Schröder, Birgit; Hawxwell, Anne (2011): Die Verletzung datenschutzrechtlicher Bestimmungen durch sogenannte Facebook Fanpages und Social-Plugins. Zum Arbeitspapier des Unabhängigen Landeszentrums für Datenschutz Schleswig-Holstein Wissenschaftliche Dienste, Deutscher Bundestag.
- Sennett, Richard (1983): Verfall und Ende des öffentlichen Lebens. Die Tyrannei der Intimität. Berliner Taschenbuch Verlag.
- Sevignani, Sebastian (2010): A Contribution to Foundations of a Critical Theory of Privacy. The Internet & Surveillance - Research Paper Series. ISSN 2219-603X.
- Solove, Daniel J. (2008a): Understanding Privacy; Harvard University Press: Cambridge, MA, USA.
- Solove, Daniel J. (2008b): I've Got Nothing to Hide and Other Misunderstandings of Privacy, George Washington University Law School Public Law Research Paper No. 289.
- Spriggs, Merle (2009): Consent in Cyberspace - Internet-based Research involving young People. Murdoch Childrens Research Institute and the University of Melbourne, Monash Bioethics Review, Volume 28, Number 4, 2009 Monash University ePress.
- Spriggs, Merle (2010): Understanding Consent in Research Involving Children: The ethical Issues. A Handbook for Human Research Ethics Committees and Researchers: Children's Bioethics Centre, Murdoch Childrens Research Institute, Melbourne.
- Sütl, Wolfgang; Stalder, Felix; Maier, Ronald; Hug, Theo (2012): Media, Knowledge and Education: Cultures and Ethics of Sharing. Innsbruck University Press.
- Tavani, H.T. (2008): Informational Privacy: Concepts, Theories, and Controversies. In The Handbook of Information and Computer Ethics; Himma, K.E., Tavani, H.T., Eds.; Wiley: Hoboken, NJ, USA; pp. 131 – 164.
- Tashakkori, Abbas/Teddlie, Charles (eds.) (2003a) : Handbook of Mixed Methods in Social & Behavioral Research. Thousand Oaks: Sage.

- The Gallup Organisation (2008): Data Protection in the European Union. Citizens' perceptions. Analytical Report. Flash Eurobarometer Series # 225.
http://ec.europa.eu/public_opinion/flash/fl_225_en.pdf.
- TNS Opinion & Social (2011): Attitudes on Data Protection and Electronic Identity in the European Union; Special Eurobarometer 359, Brussels, 2011.
http://ec.europa.eu/public_opinion/archives/ebs/ebs_359_en.pdf.
- Trepte, Sabine (2005): Crossmedia, in: Mikos, Lothar; Wegener, Claudia (Hrsg.): Qualitative Medienforschung. Ein Handbuch. UVK Verlagsgesellschaft, Konstanz. S. 508 – 515.
- Ugander, Johan; Karrer, Brian; Backstrom, Lars; Marlow, Cameron (2011): The anatomy of the Facebook social graph, URL: <http://arxiv.org/abs/1111.4503> (accessed 16 July 2013).
- Verbraucherzentrale Bundesverband (06.03.2012): vzbv gewinnt Klage gegen Facebook, URL: <http://www.vzbv.de/8981.htm> (accessed 16 Dec 2013).
- Wacks, Raymond (2010): Privacy: A Very Short Introduction; Oxford University Press: Oxford, UK.
- Warren, Samuel D.; Brandeis, Louis D. (1890): The Right to Privacy. Harvard Law Review, Vol. IV, December 15, No. 5, pp. 193 – 220.
- Wasserstrom, Richard A. (1978/1984): Privacy. Some Arguments and Assumptions. In: Philosophical Dimensions of Privacy; Schoeman, F.D., (Ed.); Cambridge University Press: Cambridge, MA, USA,; pp. 317 – 332.
- Weichert, Thilo (2012a): Datenschutzverstoß als Geschäftsmodell – der Fall Facebook, in: Datenschutz und Datensicherheit 10/2012; pp. 716 – 721.
- Weichert, Thilo (2012b): Facebook. der Datenschutz und die öffentliche Sicherheit, in: Möllers / van Ooyen 2012/2013 Jahrbuch Öffentliche Sicherheit (JBÖS), Sonderdruck, Verlag für Polizeiwissenschaft; pp. 381 – 391.
- Westin, Alan F. (1967): Privacy and Freedom, New York, Altheneum.
- Wiederin, Ewald (2002): Kommentierung von Art 8 EMRK, in: Korinek/Holoubek (Hrsg), Österreichisches Bundesverfassungsrecht, Loseblatt 5. Lieferung (2002).
- Wiederin, Ewald (2003): Der grundrechtliche Schutz der Privatsphäre: Eine Entwicklungsgeschichte. In: Peissl, Walter (Hg.) Privacy. Ein Grundrecht mit Ablaufdatum? Interdisziplinäre Beiträge zur Grundrechtsdebatte. Verlag der Österreichischen Akademie d. Wissenschaften, pp. 31-57.
- Wiederin, Ewald (2003): Privatsphäre und Überwachungsstaat. Sicherheitspolizeiliche und nachrichtendienstliche Datenermittlungen im Lichte des Art 8 EMRK und der Art 9-10a StGG, Manz Verlag, Wien.

Wiles, Rose; Heath, Sue; Crow, Graham; Charles, Vikki (2005): Informed Consent in Social Research: A Literature Review. ESRC National Centre for Research Methods. NCRM Methods Review Papers NCRM/001.

Wilson, Robert E.; Gosling, Samuel D.; Graham Lindsay T. (2012): A Review of Facebook Research in the Social Sciences. *aps Psychological Science, Perspectives on Psychological Science* 7 (3) Sage Publications, pp. 203 – 220.

Wolff, Stephan (2000): Dokumenten- und Aktenanalyse. In: U. Flick, E.v.Kardorff & I. Steinke (Hrsg.). *Qualitative Forschung - ein Handbuch*. Reinbek: Rowohlt, pp. 502 – 514.

Zurawski, Nils; Schmidt, Jan-Hinrik; Stegbauer, Christian (2012): Phänomen „Facebook“. Sonderausgabe von *kommunikation@gesellschaft*, Jg. 13, Beitrag 1. Online-Publikation: <http://nbn-resolving.de/nbn:de:0228-201213011>.

7.1. Legislation, Policy Papers and Documents

Allgemeines bürgerliches Gesetzbuch für die gesamten deutschen Erbländer der Österreichischen Monarchie (ABGB), StF: JGS Nr. 946/1811;

Article 29 Data Protection Working Party (2009): Opinion 5/2009 on online social networking. 01189/09/EN.

Allgemeines bürgerliches Gesetzbuch für die gesamten deutschen Erbländer der Österreichischen Monarchie (ABGB), StF: JGS Nr. 946/1811;

Article 29 Data Protection Working Party (2009): Opinion 5/2009 on online social networking. 01189/09/EN.

Bundesgesetz über den Schutz personenbezogener Daten (Datenschutzgesetz 2000 - DSG 2000) Bgbl. I Nr. 165/1999;

Charta der Grundrechte der Europäischen Union (2000/C 364/01) vom 18.12.2000;

Council of Europe (CoE) (1981): Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg, 28.I.1981.

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, Official Journal of the European Union L 095;

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Official Journal of the European Union L 281;

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic commu-

nications sector (Directive on privacy and electronic communications), Official Journal of the European Union *L 201*;

Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending. Official Journal of the European Union *L 105/54*;

EPIC's FTC Facebook Complaint (2010): Complaint, Request for Investigation, Injunction, and Other Relief; Before the Federal Trade Commission Washington, DC; 5 May 2010.

European Convention on Human Rights and Fundamental Freedoms, Rome, 4.XI.1950, as amended by Protocols Nos. 11 and 14 supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13; European Court of Human Rights, Council of Europe.

European Commission (EC) (2012): Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation), (COM(2012) 11 final), Brussels, 25.1.2012, COM(2012) 11 final, 2012/0011 (COD).

Europe vs. Facebook, Complaint against Facebook Ireland Ltd. – 05 'Deleted Posts', 2011.
URL: <http://www.europe-v-facebook.org/DE/Anzeigen/anzeigen.html> (accessed 18 Oct 2014).

Europe vs. Facebook, Complaint against Facebook Ireland Ltd. – 11 'Removal of Tags', 2011.
URL: <http://www.europe-v-facebook.org/DE/Anzeigen/anzeigen.html> (accessed 18 Oct 2014).

Europe vs. Facebook, Complaint against Facebook Ireland Ltd. – 14 'Removed Friends', 2011.
URL: <http://www.europe-v-facebook.org/DE/Anzeigen/anzeigen.html> (accessed 18 Oct 2014).

Europe vs. Facebook; Complaint against Facebook Ireland Ltd. – 04 'Synchronizing', 2011;
URL: <http://www.europe-v-facebook.org/DE/Anzeigen/anzeigen.html> (accessed 18 Oct 2014).

Europe vs. Facebook, Complaint against Facebook Ireland Ltd. – 10 'Access Request', 2011;
URL: <http://www.europe-v-facebook.org/DE/Anzeigen/anzeigen.html> (accessed 18 Oct 2014).

Europe vs. Facebook; Complaint against Facebook Ireland Ltd. – 08 'Consent and Privacy Policy', 2011. URL: <http://www.europe-v-facebook.org/DE/Anzeigen/anzeigen.html> (accessed 18 Oct 2014).

Federal Trade Commission, Fair Information Practice Principles (Last Modified: Friday, November 23, 2012), URL: <http://www.ftc.gov/reports/privacy3/fairinfo.shtm> (accessed 30 July 2013).

Internationales Privatrechtsgesetz (IPR-Gesetz) BGBl. Nr. 304/1978;

Irish Data Protection Commissioner (2011): Facebook Ireland Ltd; Report of Audit, Final Report. URL: <http://dataprotection.ie/viewdoc.asp?m=&fn=/documents/Facebook%20Report/final%20report/report.pdf> (accessed 16 Dec 2013).

Irish Data Protection Commissioner (2012): Facebook Ireland Ltd, Report of Re-Audit, 21 September 2012. URL: http://www.europe-v-facebook.org/ODPC_Review.pdf (accessed 16 July 2013).

Organisation for Economic Cooperation and Development (OECD) Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, (23. September 1980); URL: <http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprivacyandtransborderflowsofpersonaldata.htm> (accessed 16 May 2015).

Proksch & Fritschke Frank Fletzberger Rechtsanwälte GmbH (31.07.2014): Klage: Maximilian; Schrems gegen Facebook Ireland Limited, Wien.

Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger (StGG), RGBI 1867/142;

VO (EU) 1215/2012 des Europäischen Parlaments und des Rates vom 12. Dezember 2012 über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen, Abl L 351/1;

7.2. Cases

EGMR 06.09.1978, App. no. 5029/71; *Klass and Others v. Germany*;

EGMR 29.06.2006, App. no. 54934/00; *Weber and Saravia v. Germany*;

EGMR 01.07.2008, App. no. 58243/00; *Liberty and Others v. the United Kingdom*;

EuGH 08.04.2014, C-293/12 und C-594/12, *Seitlinger and Others*;

EuGH 13.5.2014, C-131/12, *Google v. Mario Costeja González*;

EuGH 06.11.2003, C-101/01, *Lindqvist*;

Landgericht Berlin 06.03.2012, 16 O 551/10; *Verbraucherzentrale Bundesverband e.V gegen Facebook Ireland Limited*;

OGH 14.11.2012, 7 Ob 84/12x;

OGH 22.06.2011, 2 Ob 198/10x;

OGH 22.04.2010, 2 Ob 1/09z;

8. Work & Time Plan																		
Work packages	Timetable																	
	10/14	12/14	02/15	04/15	06/15	08/15	10/15	12/15	02/16	04/16	06/16	08/16	10/16	12/16	02/17	04/17	06/17	08/17
Literature update and Kick-off																		
User Interface Analysis																		
Qualitative interviews (users/non-users & experts)																		
Transcription																		
Socio-legal analysis and interpretation																		
Quantitative questionnaire design and pre-testing																		
Implementation of the online survey (field phase)																		
Data preparation and quantitative analysis																		
Holistic in-depth analysis and data interpretation																		
Consolidation of results, prep. of papers, conference part.																		
Project management																		