INTERNET PRIVACY AND EU DATA PROTECTION OCTOBER-NOVEMBER 2018

PROGRAM

<table>
<tr><th colspan="2">Wednesday 24 October 2018 (I-II)</th></tr>
<tr><td>10:00-10:15</td><td>INTRODUCTION TO THE COURSE ¶ prof. Gerrit-Jan Zwenne ¶ What is this course about? Who are the lecturers? What is expected from students? How to prepare for lectures? ¶ How to work on the written assignment (i.e. annotation)? What are de deadlines? ¶ How to prepare for the exam?</td></tr>
<tr><td>11:00-11:45</td><td>I. THE HISTORY, CONTEXT AND BACKGROUND OF EUROPEAN DATA PROTECTION LAW, AND RELEVANT INSTITUTIONS ¶ Gerrit-Jan Zwenne ¶ preparation: 20 questions

Legislation
• Article 8 of the European Convention on Human Rights
http://www.echr.coe.int/Documents/Convention_ENG.pdf
• Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (2000/C 364/01)
http://www.europarl.europa.eu/charter/pdf/text_en.pdf
• General Data Protection Regulation,* recitals 1-4, Art. 1
https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN

Required reading (approx. 80 pages)
• Handbook on European data protection law – 2018 edition, p. 15-35, 42-52 (para. 1.1 and 1.2.2)
http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf
• S. Rudgard, ‘Origins and Historical Context of Data Protection Law’, in E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 3-23
• L. Taranto, ‘European Union Institutions’, in E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 25-40
• K. McMullan, ‘Legislative Framework’, in E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 41-64

Recommended reading
• Warren and Brandeis, The Right to Privacy”, Harvard Law Review. Vol. IV, December 15, 1890, No. 5
http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html</td></tr>
<tr><td>11:45-12:15</td><td>LUNCH</td></tr>
<tr><td>12:15-14:00</td><td>II. KEY CONCEPTS OF EU DATA PROTECTION LAW AND ITS APPLICABILITY (INCL. TERRITORIAL SCOPE) ¶ prof. Gerrit-Jan Zwenne ¶ preparation: 20 questions

Legislation
• General Data Protection Regulation, recitals 5-35, Art. 2, 3 and 4(1), 4(2), 4(5), 4(6),</td></tr>
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* Regulation (EE) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

	4(7), 4(8), 4(13), 4(14), 4(15), 4(23) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN Required reading (approx. 80 p.) • Handbook on European data protection law - 2018 edition, p. 81-111 (para. 2.1-2.3) http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf • M. Macmillan, 'Data Protection Concepts', in E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 67-84 • R. Boardman, 'Territorial Scope of the General Data Protection Regulation', in E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 85-97 • CJEU 19 October 2016, C-582/14, ECLI:EU:C:2016:779 (Breyer) http://curia.europa.eu/juris/document/document.jsf?text=&docid=184668&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1517742 • CJEU 13 May 2014, C-131/12 (Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González), par. 1-60 http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065 Recommended reading • WP29, Opinion 4/2007 on the concept of personal data, 20 June 2007, p. 1-26 http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2007/wp136_en.pdf • G-J. Zwenne, Diluted Privacy Law, (Inaugural Lecture Leiden University) 12 April 2012 http://zwenneblog.weblog.leidenuniv.nl/2013/09/12/diluted-privacy-law-inaugural-lecture-leiden-12-april-2013/ • WP29, Opinion 1/2010 on the concepts of "controller" and "processor", 16 February 2010 http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp169_en.pdf • WP29, Opinion 8/2010 on of applicable law, 16 December 2010, p. 7-18, 28-30 (Ch. II, and Ch. III, para. III.1 and III.2, Ch. IV) http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2010/wp179_en.pdf • WP29, Update of Opinion 8/2010 on applicable law in light of the CJEU judgement in Google Spain, 16 December 2015 http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2015/wp179_en_update.pdf
Wednesday 31 October 2018 (III-IV)	
10:00-12:30	III. THE MAIN PRINCIPLES AND RULES RELATING TO DATA PROTECTION ¶ prof. Gerrit-Jan Zwenne ¶ preparation 10 questions and case Legislation • General Data Protection Regulation, recitals 39-57, Art. 5-11 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN Required reading (approx. 160 pages) • Handbook on European data protection law - 2018 edition, p. 115-183 (Ch. 3-4) http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf • V. Hordern, 'Lawful Processing Criteria', E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 113-133 • WP29, Opinion 03/2013 on purpose limitation, 2 April 2013, para. I,II,III (p. 1-20) http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf • WP29, Opinion 06/2014 on the notion of legitimate interests of the data controller

	under Article 7 of Directive 95/46/EC, 9 April 2014, (p. 1-54) http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp217_en.pdf Recommended reading • WP29, Opinion 03/2013 on purpose limitation, 2 April 2013, p. 21-70 • WP29, Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC, 9 April 2014, p. 55-68
12:30-13:00	LUNCH
13:00-14:00	IV. THE SIGNIFICANCE OF DP LAW, PARTICULARLY THE GENERAL DP REGULATION, IN EUROPE AND THE REST OF THE WORLD ¶ guest lecturer: Peter Hustinx ¶ preparation: Each student to prepare one paragraph explaining what in their view is the significance of DP Law in the EU and the rest of the world (to be submitted in .docx-format via v.i.heijnen@law.leidenuniv.nl, on Friday 26 October 11:00 at the latest). Important. Please, mention your name in the docx-document you submit.
Wednesday 7 November 2018 (V-VI)	
10:00-11:45	V. DATA SUBJECT RIGHTS AND CONTROLLER TRANSPARENCY OBLIGATIONS ¶ prof. Bart Custers Legislation • General Data Protection Regulation, recitals 58-74, Art. 12-23 https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679&from=EN Required reading (approx. 100 pages) • Handbook on European data protection law - 2018 edition, p. 203-248 (Ch. 6) http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf • WP29, Guidelines on the right to data portability, 13 December 2016, revised 5 April 207, p. 1-20 http://ec.europa.eu/newsroom/document.cfm?doc_id=44099 • WP29, Guidelines on transparency under Regulation 2016/679, 9 November 2017, revised 11 April 2018, p. 1-35 http://ec.europa.eu/newsroom/article29/document.cfm?action=display&doc_id=51025
11:45-12:15	LUNCH
12:15-13:00	VI.A THIRD COUNTRY TRANSFERS ¶ prof. Bart Custers legislation • General Data Protection Regulation, recitals 101-116, Art. 44-49 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN Required reading (approx. 40 pages) • Handbook on European data protection law - 2018 edition, p. 249-270 (Ch. 7) http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf • CJEU 6 October 2015, C-362/14, ECLI:EU:C:2015:650 (Schrems) http://curia.europa.eu/juris/document/document.jsf?text=&docid=169195&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=805223

13:00-14:00	VI.B. INTERNET OF THINGS, DATAFICATION AND BIG DATA (MACHINE LEARNING, ARTIFICIAL INTELLIGENCE ETC.) ¶ prof. Gerrit-Jan Zwenne ¶ preparation: questions Required reading (approx. 60 pages) • Handbook on European data protection law - 2018 edition, p. 349-369 (para. 10.1-10.2) http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf • ICO, Big Data, Artificial Intelligence, Machine Learning and Data Protection, 4 September 2017, p. 5-57 https://ico.org.uk/media/for-organisations/documents/2013559/big-data-ai-ml-and-data-protection.pdf
Wednesday 14 November 2018 (VII-VIII)	
10:00-12:30	VII. A DATA PROTECTION IMPACT ASSESSMENT ("DPIA") ¶ prof Bart Schermer Required reading (approx. 90 pages) • Syllabus on Blackboard (containing a description of the cases) • Working Party 29 Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679 http://ec.europa.eu/newsroom/document.cfm?doc_id=47711 • Privacy Assessment Handbook Version 2.0, Information Commissioner’s Office (ICO), United Kingdom http://ico.org.uk/pia_handbook_html_v2/files/PIAhandbookV2.pdf
12:30-13:00	LUNCH
13:00-14:00	VIII. THE DATA PROTECTION OFFICER ¶ prof. Gerrit-Jan Zwenne ¶ preparation: questions Legislation • General Data Protection Regulation, recital 97, Art. 37- 39 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN Required reading (approx. 30 pages) • Handbook on European data protection law - 2018 edition, p. 174-178 (para. 4.3.1) http://fra.europa.eu/sites/default/files/fra_uploads/fra-coe-edps-2018-handbook-data-protection_en.pdf • E. Esturan, Par. 11.5: Data Protection Officer, in E. Ustaran (ed.), European Data Protection. Law and Practice, IAPP 2018, p. 209-212 • WP29, Guidelines on Data Protection Officers (‘DPOs’), 13 December 2016, (as last Revised and Adopted on 5 April 2017) http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=612048
Wednesday 21 November 2018	
10:00-12:30	XI. THE RIGHT TO BE FORGOTTEN (WORKSHOP) ¶ prof. Karolina La Fors Legislation • General Data Protection Regulation, recitals 65-66, Art. 17 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN Required reading (approx. 30 pages)

	• CJEU 13 May 2014, C-131/12 (Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González), para. 1-21, 61-100 http://curia.europa.eu/juris/document/document_print.jsf?doclang=EN&docid=152065 • CJEU 9 March 2017, C-398/15 (Salvatore Manni) http://curia.europa.eu/juris/document/document.jsf?text=&docid=188750&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=799228 • WP29 Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain and Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González", C-131/12, 26 November 2 http://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf Recommended literature • M. L. Rustad, S. Kulevska, Reconceptualizing the right to be forgotten to enable transatlantic data flow, 28 Harv. J.L. & Tech. 349, Spring, 2015; • E. Bougiakiotis, The enforcement of the Google Spain ruling, International Journal of Law and Information Technology, 2016; • K. Kowalik-Bariczyk and O. Pollicino, Migration of European Judicial Ideas Concerning Jurisdiction Over Google on Withdrawal of Information, German Law Journal, Vol. 17, 2016; • D. Svantesson, The extraterritoriality of EU data privacy law – its theoretical justification and its practical effect on U.S. businesses, Stanford Journal of International Law, Vol. 50, 2014; • E. Volokh, D. Falk, First amendment protection for search engine search results, Google White Paper, April 20, 2012.
12:30-13:00	LUNCH
13:00-14:00	x. exam training ¶ prof. Gerrit-Jan Zwenne ¶ exams of previous years to be found on blackboard
Wednesday 28 November 2018	
9:00 – 12:00	EXAM ¶ STERREWACHT (ROOM C104)
Wednesday 5 December 2018	
23:59	ASSIGNMENT DUE
	ANNOTATION (WRITTEN ASSIGNEMENT) ¶ For this course, students have to write an annotation on a decision of the Court of Justice of the European Union. An annotation is a short paper (approx. 3000 - 4000 words) that explains the facts and significance of a specific court decision. The template or structure is pre-defined and simple. ¶ Para. 1 sets-out the facts of the case in a concise manner (approx. 500 words) ¶ Para. 2 discusses the legal questions the Court had to answer and its answers (approx. 500 words) ¶ Para. 3 provides context (e.g. relation with other relevant court decisions or literature), explains the significance of the decision, its relation with other court decisions, and allows the author to give his or her opinion on whether or not it's a good or bad decision, the implications etc. (2000-3000 words). ¶ Each student will be assigned

	one of the following decisions of the Court of Justice of the European Union: • CJEU 20 December 2017, C-434/16, ECLI:EU:C:2017:994 (Nowak) • CJEU 4 May 2017, C-13/16, ECLI:EU:C:2017:336 (Rigas) • CJEU 21 December 2016, C-203/15 and C-698/15 (Tele2) • CJEU 1 October 2015, C-230/14, ECLI:EU:C:2015:639 (Weltimmo) • CJEU 17 July 2014, C-141/12 and C-372/12 ECLI:EU:C:2014:2081 (IND) • CJEU 11 December 2014, C-212/13, ECLI:EU:C:2014:2428 (Ryneš) • CJEU 7 May 2009, C-553/07, ECLI:EU:C:2009:293 (Rijkeboer) • CJEU 16 December 2008, C-73/07, ECLI:EU:C:2008:727 (Markkinapörssi) • CJEU 6 November 2003, C-101/01, ECLI:EU:C:2003:596 (Lindqvist) • CJEU 20 May 2003, C-465/00, ECLI:EU:C:2003:294 (Österreichischer Rundfunk) Assignments (in doxc.-format!) to be uploaded in blackboard on WEDNESDAY 5 DECEMBER (before 23:59). Important! Please, do mention your name in the docx-document you submit.

SEMINAR I. AND II. ¶ 18 QUESTIONS

24 October 10:00-11:45 ¶ SEMINAR I: The history, context and background of European Data Protection Law: the legal framework and institutions ¶ prof. Zwenne

24 October 12:15-14:00 SEMINAR II: Key concepts of EU Data Protection law. Applicability of EU DP law ¶ prof. Zwenne

In Seminar I professor Zwenne will discuss the history, context and background of European Data Protection Law: the legal framework and institutions. In Seminar II the key concepts applicability and territorial scope are set-out. For both seminars students are expected to have prepared answers on the questions below, which may be discussed in class.

1. When did the European Convention of Human Rights (ECHR) enter into force? What article of that Convention deals with privacy and data protection?
2. Why did policymakers and lawmakers in some European countries see the need for data protection law (data privacy law) in the 1960s and the early 1970s?
3. In 1976 the European Commission commented that "[t]he diversity of national approaches and the lack of a system of protection at community level are an obstacle to completion of the internal market". How can this diversity be such obstacle?
4. What is the role of the position papers, policy papers, and background papers by the EDPS? Are they legally binding?
5. Which ECJ (CJEU) cases are considered particularly influential in shaping EU DP-law?
6. What are the definitions of the controller and the processor? Give a few real examples of both.
7. What is meant by 'joint controllership'? What are the consequences of such joint controllership?
8. A company has a small ICT-department, consisting of five employees that provide ICT-support to other employees in the company. Does this ICT-department qualify as processor? Why (not)?
9. What was the SWIFT-case about?
10. Do pseudonymous data qualify as personal data? Why (not)?
11. When is an individual considered to be identified or identifiable?

12. Does EU DP-law apply to manual (i.e. non-automated) processing of personal data?
13. A data subject dies. Is his data still protected under EU DP law?
14. What did the CJEU say about IP-addresses?
15. What are ‘special data’ or ‘special categories of personal data’?
16. A controller decides to anonymise a personal data. Is the process of anonymisation covered by the concept of processing personal data?
17. In the Google Spain-case the Court ruled that the Spanish DP Act did apply to the processing of personal data controlled by Google Inc, which is established in Moutainview (CA) in the US. How did the Court come to that decision?
18. A Dutch electronics manufacturer instructs an India-based ICT-service provider to analyse a set of personal data on individuals in South Africa, in order to sell its devices. Does the GDPR apply to that processing?

SEMINAR III. ¶ 10 QUESTIONS (AND A CASE STUDY)

31 October 10:00-13:00 ¶ MAIN PRINCIPLES AND RULES RELATING TO DATA PROTECTION prof. Gerrit-Jan Zwenne

1. Which article(s) of the GDPR contain the data relevancy principle, the data accuracy principle and the accountability principle?
2. Which provisions in the GDPR set specific rules for processing so-called special data? Why does the GDPR provide for these specific rules?
3. According to WP29, purpose specification is an essential condition to processing personal data and a prerequisite for applying other data quality requirements. Which other requirements?
4. What are relevant factors in order to assess compatibility in the context of purpose limitation? Which article(s) of the GDPR list these factors?
5. A medical doctor's wife runs a small independent travel agency. The doctor provides his wife with details of patients who have recently been discharged from hospital. His wife uses the information to send the patients offers for her ‘Get Well Quick’ range of recuperative seven-day breaks. How could this travel agency comply with the purpose limitation principle?
6. What ‘appropriate safeguards’ (art. 6.4 GDPR) applied by the controller’ could contribute to the legitimacy of the processing of personal data?
7. What could be the processing ground(s) for the establishment of a company-wide internal global employee contact database containing the name, business address, telephone number and email address of all employees?
8. A recruitment company routinely ‘harvests’ profiles from LinkedIn and other social media websites, for the purpose of identifying individuals that could be interested in jobs of its customers. What processing ground could this recruitment company use for this processing of these personal data?
9. An employment lawyer represents her clients in court. This involves processing of personal data concerning employees. Sometimes these employees are her clients, sometimes these employees work for her clients and sometimes the employees are the other party or work for the other party.
   - What processing grounds (art. 6.1 a-f GDPR) could this lawyer use?

- And what if the data processed qualify as health data (art. 9.1 GDPR)?

10. Art. 7.4 GDPR states that, when assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract.

    What could be an example of a situation where 'the performance of a contract is conditional on the consent to the processing of personal data that is not necessary for the performance of that contract'?

SEMINAR III. ¶ CASE STUDY

31 October 10:00-13:00 ¶ MAIN PRINCIPLES AND RULES RELATING TO DATA PROTECTION prof. Gerrit-Jan Zwenne

John is a well-paid photo model whose image appears on many websites, online-brochures and the like. One of his friends tells him about his rights as a data-subject. That makes him think. After some additional research he sends one of his clients, a website publisher, a registered letter. In that letter he states (a) that, to the extent the website has his consent to process his personal data (included inter alia in photos of him), he now withdraws such consent, and (b) that consequently the website is no longer permitted to process his personal data, including the photos of him. ¶ The website asks your advice. ¶ In your advice please take into account the nature of the data processed in this context and the requirements for valid consent. Would it make a difference if John is self-employed or an employee working for an agency?

SEMINAR IV. ¶ YOUR VIEW

31 October 13:00-14:00 ¶ THE SIGNIFICANCE OF DP LAW IN EUROPE AND THE REST OF THE WORLD Peter Hustinx (guest lecturer)

Each student to prepare one (or two) paragraph(s) explaining what in their view is the significance of DP Law in the EU and the rest of the world (to be submitted on Monday 29 October 14:00 at the latest)

SEMINAR VI. ¶ 7 QUESTIONS

7 November 13:00-14:00 ¶ Internet of Things, Datafication and Big Data (Machine Learning, Artificial Intelligence etc.) prof. Gerrit-Jan Zwenne

1. The term «big data» is a buzzword that may refer to several concepts. What does it commonly encompass?
2. What are «the three Vs associated with big data»?
3. What examples of big data analytics do you know?
4. What is Artificial Intelligence (AI)? And how does this phenomena relate to big data?
5. What can you say about the impact of big data on data protection principles?
6. What is profiling? What rules apply to profiling? And why is that relevant for big data analytics?
7. How should controllers inform data subjects about big data analytics?

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SEMINAR XI. ¶ RTBF-CASES

14 November 10:00-12:30 ¶ The Right to be Forgotten (Workshop) Karolina La Fort will discuss Dutch case-law. Students need to study all cases listed below, in order to have a meaningful discussion in class about these, and similar, cases.

1. ECLI:NLRBAMS:2014:6118 ¶ **Facts** On 27 May 2012, Dutch broadcasting organization SBS 6 broadcast an episode of the TV-show 'Misdaadverslaggever' ('Crime Reporter'), produced by mr. Peter R. de Vries, a well-known TV-journalist. In this episode, video images are shown in which appellant discussed with a (alleged) contract killer (hereafter referred to as A.) how to liquidate a competitor in the escort business. A secretly filmed the conversation. On the video footage (broadcast by Peter R. de Vries), applicant can be identified and is often visualized without any image or sound distortion, but is not indicated by his full name – only by his first name and the first letter of his surname. On August 15, 2012, applicant was sentenced to six years in prison for attempted instigation of a contract killing. The conviction is partly based on the video recordings made by A. ¶ Various media have reported on the aforementioned conviction and Peter R. de Vries' broadcast. In those reports, applicant is designated by his first name and the first letter of his surname. In addition, the case inspired an author to write a new book in a crime series. The book was described by the author as 'faction', a mix of fact and fiction. In the book, the murder is actually committed. The character who commits the murder has applicant's full first and last name. The original book is in Dutch and there's an English translation as well. ¶ When entering applicant's full name into Google Search, various URLs appear as search results, either linking to the aforementioned book or to an article that mentions appellant's conviction. In 2014, applicant requested Google to remove or block these URLs as a result when entering his name in Google Search. Google agreed to remove some results and refused to remove others. The URLs Google refused to remove refer to pages on Amazon.com, books.google.nl and Abebooks.com, containing information about the aforementioned book. Applicant also requested Google to disconnect his name from 'peter r de vries' as an autocomplete suggestion. ¶ As Google declined the requests, applicant now requests the court to order Google to remove the URLs and to remove the autocomplete connection between his name and 'peter r de vries'. ¶ **Point of law** Does Google have to remove the URLs following the introduction of applicant's name in Google Search according to article 36 of Dutch Personal Data Protection Act (i.e. art. 12 of Data Protection Directive 95/46/EC)? ¶ **Judgment** The court rules that Google does not have to remove applicant's data. According to the Court of Justice of the EU's Google Spain judgment, information does not have to be removed if not 'irrelevant', 'excessive' or 'unnecessarily damaging'. The court rules that negative publicity as a result of a serious crime in general is, in fact, relevant information about a person. Applicant has insufficiently substantiated that the search results refer to information that is excessive or unnecessarily damaging.

   See Court of Appeals ECLI:NL:GHAMS:2015:1123 and Supreme Court: ECLI:NL:HR:2017:316.

2. ECLI:NL:RBAMS:2015:716 **Facts** ¶ Applicant is partner at KPMG and had a house built in Naarden (NL). Until the construction was complete, he and his family lived in an adjacent house, on which three port-a-cabins were fitted for extra space. In 2012, a dispute arose between applicant and the contractor. As a result, the contractor exercised his right of retention by replacing the locks of the house. In November 2012, they reached a settlement. ¶ On May 10, 2012, De Telegraaf, a Dutch national newspaper, published an article on the front page about the conflict with the contractor, including applicant's photograph. Various other media copied and published the article. ¶ In 2014, applicant requested Google to remove or block De Telegraaf newspaper article when entering his name into Google Search. Google Inc declined the request. Applicant then demanded that Google Inc or removed or no longer processed all URLs referring to the conflict. Again, Google Inc refused, as according to Google Inc the information about applicant is relevant, of public interest and not

outdated. ¶ **Point of law** Does Google have to remove the URLs following the introduction of applicant's name in Google Search according to Article 46 Dutch Data Protection ACT (i.e. art. 14 Data Protection Directive 95/46/EC)? ¶ **Judgment** The judge ruled that applicant does not have the right to be forgotten regarding the URLs in question. The right to be forgotten is an exception to Google's right to freedom of information. In this case, the right to freedom of information is more important. The articles that applicant wants to be removed, do not contain information that unnecessarily causes damage.

3. **ECLI:NL:RBAMS:2015:9515** **Facts** Applicant is a journalist. In the Dutch national newspaper NRC-Handelsblad (hereinafter NRC), an article was published in which another article from a weekly paper is being discussed. The NRC article states that the weekly paper has terminated the collaboration with a freelance employee (applicant) with immediate effect, because of plagiarism. ¶ When entering applicant's name into Google Search, the fifth result is an URL that links to the NRC article, including a snippet (a short summary of the page underneath the title). Applicant requested Google to remove the URL. Google declined the request. On applicant's request, the Dutch Data Protection Authority then requested Google to review the decision. Google granted the request, but did not change its decision. Applicant now requests the court to order Google to remove the URLs. The request is based on articles 36 and 46 of the Dutch DP Act (i.e. art. 12 and 14 Data Protection Directive 95/46/EC and the Google Spain judgment. The request only regards the link, not the complete search result itself. ¶ **Point of law** Is the information shown by the search result excessive and irrelevant given the circumstances of this case, and should Google therefore remove the link? ¶ **Judgment** When weighing up the interests, it's important that restraint is required when imposing restrictions on the operation of a search engine such as Google Search (ECLI:NL:RBAMS:2014:6118), because such search engines fulfill an important social role in society. ¶ The result of the weighing of interests is, in this case, not in applicant's advantage. The fact that the article was written years ago, does not mean it is no longer relevant. With regard to this, the following is important:
   - There's no dispute about the fact that the NRC article provides correct information;
   - The NRC article refers to applicant's actions. In a way, he has brought the publications and the public interest that resulted from his actions upon himself;
   - The NRC article refers to applicant's actions as a journalist – not as a private person – and applicant still works in the journalistic sector;
   - In the NRC article, applicant's conduct is regarded as plagiarism. It is undisputed that plagiarism, also in lighter forms, is regarded a serious offence in journalistic circles.

   In light of these circumstances (also based on privacy-based guidelines in relation to the *Google Spain* judgment), the court considers it important that the information is available and will remain so in the future; especially regarding the journalistic profession and applicant's potential future employers. They must be able to assess the extent of the seriousness of applicant's "wrongdoing" and the fact that it took place quite a while ago. It is therefore important for Google to be able to offer the information. The search result regarding the NRC article is found not to be excessive or irrelevant. ¶ According to the court, it is reasonable that Google declined applicant's request to remove the link. The court therefore declines applicants request.
4. **ECLI:NL:RBROT:2016:2395** **Facts** Applicant worked as an attorney in 2012 and 2013. In 2012, he was convicted for possession of prohibited weapons and sentenced to a suspended prison sentence and community service. A local blogger published an editorial article about this on his website, including applicant's name and photo, quotations from the hearing and the sentences imposed. ¶ When typing applicant's full name into Google Search, different URLs show up in the search results. This procedure is about two specific URLs. Applicant requested Google to remove or not show the URLs as a search result linked to his name. Google rejected the request. Applicant then asked Dutch Data Protection Authority (DDPA) to mediate. DDPA rejected because the criminal conviction is recent and the news about it serves a public interest. ¶ Applicant requests

the court to order Google to remove or block the URLs that result from the search for his name. According to applicant, the processing of data is unlawful according to article 8 paragraph 5 of the Data Protection Directive 95/46/EC. He also invokes the fundamental right to the protection of privacy and personal data, based on articles 7 and 8 of the EU Charter, article 8 ECHR and the Google Spain judgment. ¶ The request does not refer to the complete search result, but only to certain URLs that link to one source page. ¶ **Point of law (a)** Is this data relating to offenses, criminal convictions or security measures, as stated in article 8 par. 5 of the European Privacy Directive? (b) Does Google have to remove or block the URLs from the search results? ¶ **Judgment** The court rules the data concerned indeed relates to offenses or criminal convictions. As no exceptions apply in this case, processing of the data is prohibited according to article 16 Wbp (i.e. art. 8 DP Directive 95/46/EC). Insofar this should be judged differently, the court considers that a weighing of interests – the applicant's right to privacy and Google's right to maintain search results – is also in favor of applicant, based on article 36 jo. 40 Wbp (i.e. art. 12 and 14 DP Directive 95/46/EC). The court rules that Google must remove the URLS from its search results.

5. ECLI:NL:GHDHA:2017:1360 Facts Appeal of ECLI:NL:RBROT:2016:2395. For the facts, see nr. 7. ¶ The court ruled that Google has to remove the URLs from its search results. Google appeals the decision. ¶ Google argues that it does not intend to process personal data relating to offenses or criminal convictions and therefore violate the prohibition of article 16 Wbp. Google also argues that in this case an exception to the prohibition is applicable according to article 23 Wbp. Google states that the data were made public by defendant as the processing is a direct and foreseeable result of his actions. Google also tries to invoke the journalist exception for processing data. ¶ Point of law Does Google have to remove the URLs from its search results? ¶ Judgment Google argues that it did not intend to violate article 16 Wbp (i.e. art. 8 DP Directive 95/46/EC The fact that Google knew it was possibly violating that article, and still continued to do so, suggest otherwise. ¶ The Court of Appeals rules that no exception to the article is applicable. Google cannot rely on the journalist exception, as Google is an operator of a search engine, not a journalist. The Court of Appeals upholds the court's judgment, so Google must remove the URLs.

6. ECLI:NL:RBAMS:2017:2896 **Facts** Applicant owns a gym, a sportswear store and organizes poker tournaments. At a certain point in time, he was associated with money laundering through a company and drug-related offenses. Newspaper MaltaToday has published an article on the issue. The article states that applicant was (a) a suspect in a drug investigation, (b) that he was a beneficiary of a company and (c) that he was involved in questionable financial transactions. The article also states that a Maltese politician who was involved in the case, possibly covered for applicant. ¶ The revelations in MaltaToday led to further publicity. A Maltese journalist (a former MEP) posted an article on his blog in which a photo of applicant is shown and applicant is mentioned in connection with money laundering. Various other media copied the article. Subsequently, a committee was set up in Malta to investigate why the police investigation in Malta had been discontinued at the time. This again led to publicity. ¶ Applicant requested Google to remove the link to MaltaToday's article when searching for his full name in Google Search. Google declined the request. According to Google, the information about applicant is relevant, in the public interest, not outdated and not excessive. ¶ Applicant requests the court to order Google to remove the link between applicant's full name and the URL from www.google.nl and www.google.eu. The request is based on the Dutch DP Act, the EU Charter and the Google Spain judgment, as well as on civil law principles regarding unlawful acts by Google. ¶ Google argues that applicant has become a public figure because of his actions, that the reporting is limited to business and financial activities that have become public domain. The article does not contain any details about claimant's private life. Google therefore argues it is not bound to remove the URL. ¶ **Point of law** Does Google have to remove the URL? ¶ **Judgment** Applicant has no public function and cannot be regarded as a 'public figure'. Google has not made sufficiently clear why the public has an interest in obtaining information from the article when typing applicant's full name into Google Search. It is also important that it's about sensitive information about applicant's private

life, while criminal charges against him were dropped by the public prosecution due to lack of evidence. Google can still make the information available to the public, but not as a search result connected to applicant's name. The court rules that Google must remove the URL from the search results.

7. ECLI:NL:RBDHA:2017:264 **Facts** Applicant is a former real estate entrepreneur. In 2005, he was suspected of organized mortgage fraud and a criminal investigation was initiated. When entering applicant's name in Google Search, various URLs appear in the search results. In 2015, applicant requested Google to remove some URLs from the list of search results. Google declined the request. In 2016, the court closed the criminal case against applicant and applicant was not convicted. Applicant then requested Google to review the earlier request, referencing to the court order. Google declined the request again. ¶ Applicant requests the court to order Google to remove 10 URLs from the search results that appear when searching for applicant's name. He bases the request on article 16 of the Dutch DP Act, which implements article 8 paragraph 5 of Data Protection Directive 95/46/EC that prohibits processing of criminal data. According to applicant, no exceptions to this prohibition under the Dutch DP Act apply. Further, applicant invokes articles 7 and 8 EU Charter and the Google Spain judgment. ¶ **Point of law** Can the processing of data in this case be regarded as the processing of criminal data as referred to in article 16 of the Dutch DP Act and must Google therefore remove the relevant URLs from the search results? ¶ **Judgment** There is no processing of criminal data as referred to in article 16 Dutch DP Act. The search results do not include the recording of such concrete facts and circumstances that they constitute a judicial finding of fact within the meaning of article 350 of the Dutch Code of Criminal Procedure). Nor can be said that the processing in the search results constitutes a more serious suspicion for applicant than a reasonable suspicion of guilt to a criminal offense. ¶ When weighing up the interests, the court rules that in this case the interference with the fundamental rights of applicant by Google is justified. Applicant has not or not sufficiently proven that the display of the URLs in the search results is incorrect, irrelevant or excessive and that his interests regarding privacy outweighs the public interest of being able to find the web pages and the importance of Google being able to keep the web pages available to the public.
8. ECLI:NL:RBOVE:2017:278 **Facts** In 2012, applicant was sentenced to 30 months in prison, 10 of which conditional, because of committing lewd acts with a minor. The court of appeal annulled the court's judgment and sentenced applicant to 12 months in prison for committing lewd acts, 6 of which conditional. ¶ When entering applicant's name in Google Search, the search results contain various URLs that refer to web pages, images and a video. Applicant requested Google to remove a number of URLs (URL 1, URL 2, URL 3, URL 4) from the search results. Google declined the request. ¶ Applicant therefore requests the court to order Google to remove or block a number of URLs from the search results. He bases his request primarily on the unlawfulness of the processing of criminal data according to article 8 paragraph 5 of DP Directive 95/46/EC and article Dutch DP Act that implements that article from the Directive. Moreover, applicant claims that Google infringes the fundamental right to the protection of privacy and personal data, of articles 7 and 8 EU Charter and article 8 ECHR. He also refers to the Google Spain judgment. ¶ Applicant argues that the combination of data processing constitutes a total exposure of his personal data – his name, photos and camera images, reference to his former company, in combination with a colored representation of the handling of the criminal case at the court. This representation is in conflict with the conviction on appeal. ¶ **Point of law** Is there any processing of data relating to offenses or criminal convictions by Google and must Google therefore remove or block the relevant URLs? ¶ **Judgment** The court rules that URL 1 (a link to a Facebook post) contains special personal data and that applicant did not intend for this information to become public. The court rules that this is different with respect to URLs 2, 3 and 4. The intention to make that data public is apparent from applicant's conduct. The information discloses activities relating to business and promotion regarding applicant's former company, in which applicant explicitly profiles himself. According to the court, this justifies Google's processing of the (special) personal data in URLs 2, 3 and 4. A

weighing of interests of the applicant and Google does not lead to a different decision. The court states that the information is not inadequate, irrelevant or excessive. ¶ The court grants applicant's claim regarding URL 1 and declines applicant's claim regarding URL 2, URL 3 and URL 4. Google is ordered to remove or block URL 1.

9. ECLI:NL:RBMNE:2017:805 **Facts** Applicant claims he suffers from negative publications on the internet, in which he is wrongly labeled as (ex) criminal and someone who falsifies diplomas and titles. He would therefore not be able to become socially active again to make a living. He filed a lawsuit because in his opinion, Google should remove the search results that link to such publications about him. ¶ **Point of law** Are the search results inadequate, irrelevant or excessive, or is the published information incorrect and does applicant therefore have a right to removal of the search results by Google? ¶ **Judgment** The court rules that applicant has a right to removal of the search results if there is incompatibility with the Dutch DP Act. There is incompatibility if the search results are inadequate, irrelevant or excessive (as ruled in the Google Spain judgment). That is not the case here. The court rules that it's not certain the published information is incorrect. The question of whether applicant graduated from a university and therefore possibly wrongly claims to be a graduated lawyer, is still relevant. The court rules there is no sufficient reason to remove the search results and therefore decides Google does not have to remove them.
10. ECLI:NL:RBLIM:2018:2751 **Facts** Applicant was director of a private limited liability company, which in turn was director of four other private limited liability companies, all located in the same city. In 2005, the companies were declared bankrupt. In addition to publications in national media, regional newspaper Dagblad De Limburger published about the bankruptcies. In 2006, applicant and his brother filed a lawsuit against publisher De Limburger, to prevent publication of certain articles. On appeal, these claims were rejected. From 2010 to 2012, Dagblad De Limburger continued to negatively report about procedures against applicant and his brother. ¶ When entering applicant's name into Google Search, different URLs come up in the search results. This procedure is about five of those URLs. Applicant requested Google to no longer show the URLs as a result of entering his name into the search engine. Google declined the request. ¶ Applicant requests the court to order Google to remove or block the URLs. He argues that the information in the URLs is irrelevant and incorrect. He also states that some parts of the text in the URLs are unnecessarily offensive or hurtful. ¶ Point of law Is the information irrelevant, incorrect or unnecessarily offensive or hurtful, and does Google therefore have to remove or block the URLs? ¶ **Judgment** In the court's opinion, the information in the URLs is not irrelevant. The information is up-to-date as the bankruptcies have not yet been settled and there is still a procedure before the Court of Appeals against applicant, concerning director's liability. In addition, reports of bankruptcies that may have been caused by fraud or mismanagement are subject to social debate and the public therefore has an interest in being able to find information about this. ¶ Applicant has not been able to demonstrate that the information in the URLs is incorrect. Applicant's claim that some parts of the text in the URLs are unnecessarily offensive or hurtful is rejected by the court. If applicant wishes a substantive review of the published information, he must address the responsible publishers or editors instead of Google. ¶ The weighing of interests between applicant's right to privacy and the protection of personal data, and the fundamental rights of the internet user and of the search engine operator to freedom of expression and the right to collecting relevant information, is also in favor of Google. The court rejects applicant request, Google does not have to remove or block the URLs.
11. ECLI:NL:GHAMS:2015:1123 **Facts** Appeal of ECLI:NLRBAMS:2014:6118 (Amsterdam Escort Assassin). For the facts, see nr. 1. ¶ The court ruled that Google does not have to remove the URLs containing applicant's data. He appeals the court's decision. The Court of Appeals agrees with the lower court and states that the public has an interest in gaining access to information about serious offenses and therefore also about the prosecution and conviction of appellant. Appellant has been convicted by the court for a recently committed serious crime and he does not have the right to be protected from search results that may cause the public to link him to the offense. The appeal in

his criminal case is still ongoing and the crime is very recent. This justifies publication of the information about appellant. ¶ Appellant wants Google to remove any link to the book that was inspired by the crime. The Court of Appeals states that the public cannot, based on the contents of the book, establish a certain connection between appellant and the offense he committed, as the facts in the book are different. ¶ Google also does not have to remove the autocomplete suggestion 'peter r de vries' linked to appellant's name in Google Search. ¶ **Point of law** Does Google have to remove the information about appellant? **Judgment** The Court of Appeals agrees with the lower court and states that the public has an interest in gaining access to information about serious offenses and therefore also about the prosecution and conviction of appellant. Appellant has been convicted by the court for a recently committed serious crime and he does not have the right to be protected from search results that may cause the public to link him to the offense. The appeal in his criminal case is still ongoing and the crime is very recent. This justifies publication of the information about appellant. ¶ Appellant wants Google to remove any link to the book that was inspired by the crime. The Court of Appeals states that the public cannot, based on the contents of the book, establish a certain connection between appellant and the offense he committed, as the facts in the book are different. ¶ Google also does not have to remove the autocomplete suggestion 'peter r de vries' linked to appellant's name in Google Search. The Court of Appeals upholds the judgment being appealed.

12. ECLI:NL:HR:2017:316**Facts** Appeal in cassation of ECLI:NL:GHAMS:2015:1123 (first instance: ECLI:NLRBAMS:2014:6118). For facts, see nrs. 1 and 13. ¶ The court ruled that Google does not have to remove the URLs containing applicant's data. The Court of Appeals (Amsterdam) upholds this judgment. Appellant now appeals the decision in cassation at the Supreme Court. ¶ Point of law Did the Court of Appeals apply the law correctly? ¶ **Judgment** The Supreme Court states that the Court of Appeals did not state anything concerning the interest of the public with regard to being able to find information about the conviction when entering appellant's full name into Google Search. Neither did the Court state what might be relevant in connection to this, such as whether appellant plays an active role in public life. The mere fact that appellant was convicted by the court in first instance and that there has been publicity following the conviction, is not sufficient to justify the infringement of appellant's rights to privacy and the protection of personal data. The Court of Appeals did not determine appellant's interest, including the fact that his conviction is not yet irrevocable. The Court of Appeals did not properly weigh the interests of the applicant and the public. ¶ The Supreme Court overturns the Court of Appeals' judgment and refers the case to the Court of Appeals of The Hague for a new decision.

SEMINAR VIII. ¶ 12 QUESTIONS

21 November 13:00-14:00 ¶ THE DATA PROTECTION OFFICER prof. Gerrit-Jan Zwenne

1. What is the definition of a data protection officer ("DPO")? Where in the GDPR is that laid-down?
2. What constitutes a «public authority or body» (art. 37.1a GDPR)? Are companies providing public transport services, water and energy supply, public broadcasting, public housing and a Bar Association covered by the definition? And what about public schools and universities?
3. What are «core-activities»? And why is this relevant?
4. In a law-firm, 15 fee-earners (three partners and 12 associates) work in teams on complex employment law cases. The work often implies that they have very sensitive employee information, e.g. about work-related illnesses or suspicions of criminal acts.

   Does this law-firm have to designate a DPO?
5. A US-based retailer uses cookies and pixels for so-called online behavioural advertising ("OBA").

   Should the retailer designate a DPO?

6. An investigation agency collects data on individuals that have been found guilty for serious hate crimes.

   Should the agency designate a DPO?

7. A group of financial institutions, with customers in more than 50 countries, decides to designate one DPO for all subsidiaries.

   According to WP29, what requirements, in terms of effective communication and language-skills, apply to the person to be designated?

8. DPO-as-a-Service BV is a very successful full-service consulting firm, which consists of one professional that is designated as DPO for more than 250 controllers and processors.

   Would you recommend his services to a controller that needs to designate a DPO? Why (not)?

9. An insurance company considers designating its Data Governance Officer ("DGO"), who is a member of the board, as DPO.

   Is this allowed? Why (not)?

10. DPO advises a processor to conduct a data protection impact assessment ("DPIA") because she considers that the processing is likely to result in high risk for data subjects. However, the company disagrees with the DPO's advice, as it does not consider it to be well founded and consequently decides not to proceed with the DPIA.

    Can the processor ignore the DPO's advice?

11. What can a controller or processor do to exclude a conflict of interest (art. 38.6 GDPR)?

12. Where should the DPO be located?