

Summary of the Scholar's Round-table



A scholar's round-table on the theme: *Open for whom? Equity in Open Knowledge* was convened on October 24, 2019 (Thursday) at Villa Salviati by the InfoSoc Working Group to mark the International Open Access Week this year.

The Information Society Working Group (InfoSoc WG) is an interdisciplinary forum for EUI researchers and fellows from all departments and the Robert Schuman Centre to reflect on key developments in the theory and practice on topics and themes related to the Information Society, Internet Governance, and Intellectual Property rights. The InfoSoc WG has been active at the EUI since Spring term 2006, and is supported by Prof. Peter Drahos.

"If you were to describe what characterizes open knowledge, what would your answer be?" This was the opening question posed by Sunita Tripathy, PhD Researcher (Law) inviting all the attendees to share their impressions about the concept of openness in the creation and consumption of knowledge. The responses explained that knowledge that is accessible, reliable, of good quality, has aspects of transparency and inclusiveness and overall is of social relevance, is understood as open knowledge. This reflection led us to think about the merits and challenges of producing research of that nature, and unraveled the role played by interests that drive incentive structures in the knowledge economy.

From the prevalence of proprietary publishing models, to the University practices of publish or perish, appraisals and rankings as well as the metrics to meet 'impact' expectations from research highlighted the importance of regard for relevance, reach and the ethical responsibility of acknowledging what aims does one wish to serve as researchers who are the producers of new knowledge and reflect on whether one wants all, some or any to benefit from such knowledge sharing. Are we open? Do we want to be open? If yes / no, why? And for whom?

For provoking more thoughts on the issues identified, we began by understanding what may be preventing sharing of research results as well as data and the value of protecting it under intellectual property by listening to the first flash talk by Xioren Wang, Max Weber Fellow who spoke on the 'law and psychology of sharing intellectual property.' She explained that psychological studies reveal that the public perceives intellectual property right to be a natural right rather than an incentive to create new knowledge. This is a departure from the traditional reasons for creating the legal system for protecting intellectual property and the economic justification for its continued existence as well. This may negatively affect the end-consumer. For example, companies can hide or project information that may manipulate consumer choice. This is evident in the way trademarks are protected for long periods of time and used to keep other players out of the market. Her

empirical work on colour trademarks identifies that fanciful images are used by companies to influence consumers to buy products that they may not be choosing, at a price that they may not be willing to pay. This is also indicative of the need for calling out prohibitive practices that disregard equity and consumer welfare.

This presentation was followed by the second flash talk on 'open data, non-personal data and access: where are we now?' by Tommaso Fia, PhD Researcher (Law) who described about the concerns of non-personal data ownership including the breach of freedom of information. He explained that companies share non-personal data as tradeable commodities by way of private agreements, in which datasets are treated as confidential information or licensed content. Hence, businesses cannot share and re-use non-personal data with other actors. Extending property and ownership regimes to non-personal data is rather a bad idea. Indeed, this may legally strengthen the de facto power of few actors and considerably restrict the free flow of data amongst different actors. Furthermore, data ownership results in breach of the principle of freedom of information as per Article 10 ECHR and Article 11 CFREU. Raw non-personal data is the new oil for many companies, but the processes of commodification and accumulation by few actors may jeopardise the current efforts of the institutions to build up a well-balanced data economy resting on free flow of data. The existing regulatory framework of contract law is not sufficient to ensure proper functioning of these markets. His research will address the challenges posed by such processes.

The discussants for these two flash-talks were Giacomo Tagiuri, Max Weber fellow and Francesca Palmiotto, PhD Researcher (Law) respectively. They highlighted that the complex issues faced by the society both in terms of authenticity of advertised information and non-personal data access requires an interdisciplinary approach which will inevitably need greater dissemination and improved sharing practices amongst creators and consumers. The responses from the speakers to the discussants and attendees during the interactive question and answer session that followed is summarized below for general understanding:-

Flash-talk 1:

1. Given the political economy of capitalism, is consumer's right more and more restrained?
Yes. Companies are more and more powerful today and they have many resources to manipulate consumers. For example, luxury firms create fanciful product images so that consumers believe the products have a high quality and pay an unreasonably high price. But in fact, the quality of some luxury products is not as high as they present.
2. Whether we should respect consumer autonomy? For example, whether we should let consumers pay a higher price for products they desire if they wish.
My thought is that some consumers pay for a fanciful product image because they are manipulated, while others are conscious and willing to pay for a fanciful product image. Consumer autonomy means they have the right to know whether they are manipulated. In other words, consumers have the right to know the price paid covers not only the searching cost and the physical product, but also the fanciful product image.
3. Whether your research focuses on fairness in trademark law that may play a role in changing consumer behaviour?

For future research, I want to empirically test how consumers view the fanciful image produced by trademarks. Are most consumers manipulated by mental images? Do consumers know what they are paying for and how much they are paying? I will test whether consumers know what they are paying for and whether they accurately price the value of imagery. For example, many consumers might pay a price premium for a famous brand because they expect to get a higher quality good. If they knew, for example, that 40% of the price was allocated to advertising and not quality manufacturing, then some of them (maybe a substantial number) would not purchase. The significance of this empirical study is to diagnose whether modern trademark law has deviated from its original purpose, protecting consumers and encouraging companies to keep a consistent quality. If the empirical study indicates that consumers are manipulated, it will provide evidence that trademark protection is becoming the tool of companies to manipulate consumers.

Flash-talk 2:

1. How can a right of access to non-personal data and intellectual property rights be balanced? The right of access to non-personal data I propose would cover raw non-personal data which has not gone through analytics. Hence, any semantic and valuable information would not be covered by such a legal position, and the relevant stakeholders can still enjoy legal protection as IP owners.
2. How can a right of access to non-personal data enhance innovation? A right of access to non-personal would enhance innovation by granting spread of raw material amongst different actors for new innovative activities. Indeed, companies can re-use such data in different ways to develop new services and products.
3. Whether your research will focus on a constitutional basis for creating an open data regime in EU?
In my research activity, I will attempt to focus on the possible solutions to create and enhance a right of access to non-personal data. In particular, I will try to understand if such legal position can be based upon the principle of freedom of information as per Article 10 of the ECHR and Article 11 of the EU Charter of Fundamental Rights.

As the round-table came to a close, it emerged rather organically that building trust and accountability in the production and consumption of research – that may inform our audience (be they peers, consumers or users of data) was **critical to making openness the default for research**. We thank Prof. Peter Drahos and all our professors for their encouragement as well as the Law Department and the administration at EUI for their generous support in organising this academic event at its best level. We were happy to receive positive feedback from the attendees and hereby extend an invitation to join us for more interesting discussions and flash-talks on themes that may be of your academic interest.

InfoSoc is happy to have collaborated with the EUI Library Open Science team for hosting this thematic scholar's roundtable and inaugurate the series of flash talks during the International Open Access Week of 2019. We look forward to diverse and new opportunities to jointly work with many others in the future. Please feel free to email us on InfoSoc2018@EUI1.onmicrosoft.com

Ofra, Stefan and Sunita

InfoSoc WG Coordinators