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Human rights concept and guidelines for GIScience

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ABSTRACT

The CGI collecting and using provides great opportunities, but at the same time creates new challenges. There are a lot of legal and ethical issues connected with CGI, as well as other data. One of the most important problem is the long-term consequences for human rights protection and implementation, which are hard to predict. Human rights are changing in digital age, and it have impact on CGI issues. The new rights emerge, such as right to be forgotten, right to the Internet, right to the anonymity. The meaning, limits and practice of protecting the fundamental rights well-known to us are changing. The freedom of expression, privacy, the right to association, election rights, the right to information are affected, as well as many other ones. The amount of geographic information that can be collected on different platforms makes it very easy to interference into your rights.

Some successful practices, current and potential, could be use for solvig problem. The four have to be highlighted: those that have already proved effective, those that could be extended onto broader spheres, those that could emerge in the foreseeable future and need our attention right now, and some debatable but applicable ones.

1. Introduction

Collecting and using a wide range of data, including geographic information, provides great opportunities, but at the same time creates new challenges. The CGI collection and usage has grown over the past few years due to a vast array of key features, such as being free, autonomous, timely, accessible, flexible, reusable and allowing to involve a wide range of participants. At the same time, however, CGI is characterized by a great diversity, its precision and reliability could be questioned, as well as the motives and awareness of the users providing geodata.

There are a lot of legal and ethical issues connected with CGI. Among the legal ones are: the contradictory regulations, the jurisdictional problems, including cyberspace and long-term consequences for human rights protection and implementation, which are hard to predict. I'm going to show the impact of the human rights concept and the protective mechanisms, in particular, on the CGI issues. I will be focusing on some successful practices, current and potential, that could really help. I will highlight four: those that have already proved effective, those that could be extended onto broader spheres, those that could emerge in the foreseeable future and need our attention right now, and, finally, some debatable but applicable ones.

2. Human rights in digital age and their impact on CGI issues

Let me start by highlighting the human rights concept changes entailed by the digital age. No sphere seems to be intact, including CGI.

In the first place, new rights that have never existed, emerge, such as right to be forgotten, right to the Internet, right to the anonymity, etc. And I predict the right to be saved and stored to become important in the nearest future. Even though legal instruments to protect those rights are only just being formed, some of them are already widely recognized.

It's vital that the new rights are forming unexpectedly fast. We know how fast technology is evolving. We have seen the short time that has passed from the driverless car prototype to their appearance on the roads. Not only do the technologies develop exponentially: the same rapid development is observed in human rights practices. Take, for example, the long lasting digital footprint, which turned out to be everyone's problem as soon as information became so easy to store, search and access. It's not only about how difficult it is to make some institutions remove your address from the mailing list or erase geodata when you no longer live in a particular place. It's about how risky it is to suddenly encounter your former self, that isn't really you any longer, in cyberspace. It's about being chased by the consequences of your past wrong choices, even if you have sincerely changed your beliefs, as it happened to Alexandra Wallace, who had posted a racist video on YouTube.¹

A natural response to the long lasting digital footprint issue became the right to be forgotten. It was such a short way from the controversial case², to the discussion of its sense and limits³, to the emergence of special legislation and full legal protection.⁴

¹ Ambrose, Meg Leta. 2013. "It's About Time: Privacy, Information Lifecycles, and the Right to be Forgotten". *Stanford Technology Law Review* 16 (2): 369–422, p. 373.

² *Google Spain, Google Spain SL and Google Inc. v Agencia Española de Protección de Datos and Costeja González*, 2014. Judgment, Case C-131/12, ECLI:EU:C:2014:317.

Apart from that, the meaning, limits and practice of protecting the fundamental rights well-known to us are changing. First of all, freedom of expression, privacy, participation rights (the right to association, election rights), the right to information – these are all affected. This is due to the fact, that long term and implicit threats for the human rights which are next to impossible to predict appear in digital age.

We should also take into account shifts in the usual behavior of people, such as, for example, the daily habit of accessing free self-updating maps, sharing various information on social media and actively generating content. All of these may also affect the realization of rights. For example, one of the broadest rights in the Convention for the Protection of the Rights and Fundamental Freedoms, privacy is compromised. Many users do not pay attention to the fact that the default privacy settings, both on the devices, and in applications and social networks, contain automatically enabled geolocation. In addition, it is acquiring the features of a collective phenomenon when private information can be not only what you reveal about yourself, but also what others reveal about you. If your friend tags you in a photo, she gets basic control over your privacy settings. She can also geotag the picture. Then it could be used for CGI.

The amount of geographic information that can be collected on different platforms makes it very easy to create a portrait of a specific person. And this can be used not only for comparatively innocent profiling so that the supermarket closest to you could send your targeted advertising, but also for gross interference into your rights. For instance, we simplify stalking because the geodata are so easily acceptable. Thus, human rights are at risk, which means that everyone is at risk – because they are the basis for human communities.

3. Existing solutions

I will now go over to some successful practices in CGI legal and ethical issues solving.

Among the existing solutions, of course, the advanced legislation is the GDPR, which offers effective and thoughtful tools for solving some legal problems and contains an advanced approach to human rights. In particular, GDPR includes such rights of the data subject, as the right of access

³ See: Bartolini, Cesare, and Lawrence Siry. 2016. "The right to be forgotten in the light of the consent of the data subject". *Computer Law & Security Review* 32 (2): 218–37. <https://doi.org/10.1016/j.clsr.2016.01.005>; Hoffman, David, and Paula Bruening, and Sophia Carter. 2016. "The Right to Obscurity: How We Can Implement the Google Spain Decision". *North Carolina Journal of Law & Technology* 17 (3): 437–82.

⁴ Regulation (EU) 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), para 65.

by the data subject, the right to rectification, the right to erasure (“right to be forgotten”), the right to data portability, the right to object and automated individual decision-making, etc.

One of the most sought after rights, the right to be forgotten, only takes a short time from a viral case to the legislation. This case, known as “Google v. Spain” was more about hindering access to the results of data searches. Now the data subject shall have the right “to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay”.⁵ It works not only for unlawfully processed or stored data, but also for the personal data that are no longer necessary in relation to the purposes for which they were collected or otherwise processed, or if the data subject withdraws consent on which the processing is based.

At the same time, the right to be forgotten appears to be quite limited, especially against the backdrop of global jurisdictional battles. A few days ago, the Court of Justice ruled on the case of “Google v. CNIL”, which established that the EU legislature “has not struck such a balance as regards the scope of a de-referencing outside the Union”.⁶

In addition to traditional legal instruments, we can also use innovative practices that could be extended onto a broader sphere. Earlier on, I talked about a possible new human right – the right to be saved and stored. This right could target both the issues of digital remains, the profile of the dead people and some wider possibilities to save your identity in a digital form.

And here I want to give an example of how a concrete successful practice could be extended. Facebook was the first to introduce a policy for dealing with digital remains, providing an opportunity to preserve the deceased person’s account or an indefinite period of time. This was preceded by a case in which parents wanted to keep the memory of their dead son online, but according to the rules of the company, the account had to be deleted, followed by the struggle to perpetuate the accounts of victims of mass shooting and natural disasters.⁷ Then similar policies were proposed by other social media. At present, legislative changes regarding the inheritance of the profile and the ability to bequeath access to your account are being discussed.

Perhaps tomorrow there will be an opportunity to save your identity in a digital form or – why not? – even to maintain your consciousness in the artificial body of the android. But will there

⁵ Regulation (EU) 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), para 65.

⁶ Google LLC, successor in law to Google Inc. v Commission nationale de l'informatique et des libertés (CNIL), Judgment in Case C-507/17, Court of Justice of the European Union, (Grand Chamber), 24 September 2019, ECLI:EU:C:2019:772, para 61.

⁷ McCallig, Damien. 2014. “Facebook after death: an evolving policy in a social network”. *International Journal of Law and Information Technology* 22 (2): 107–40. <https://doi.org/10.1093/ijlit/eat012>

be any problems with the inheritance if your beloved grandfather revises the will after the death of his physical body and assures it with a digital signature? Will the new identity be legally recognized as identical to the old? Should we wait for legal proceedings to recognize the fact of identification? How will our ideas about the moment of death of a person change? We can observe how technologies will put into question the ideas we have had about our own identities⁸ and suggest that it may require an equal legal status of real and virtual persons. For some issues, we do not have any existing practices, but this does not mean that we should not be ready.

4. Suggested solutions

Over to yet debatable models that could be efficient for CGI problems. Here I'm going to talk about one accepted model supported by UN Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework (UN Guiding Principles)⁹, State National Action Plans and National Baseline Assessment on Business and Human Rights (with some vital indicators).

Its key premise is the distribution of responsibility, when it is not only the state that is the addressee of human rights, but also other law subjects that may have an influence in our digital age. For example, transnational corporations and international organizations.

Non-democratic regimes exploit data vulnerabilities to violate the rights of their citizens and interfere in democratic processes in other states. Geodata, for example, can be used to quell civil protests. The sensational Facebook and Cambridge Analytica case shows how a lack of attention to human rights in business processes and an unpreparedness for new threats, including a shortage of legislative and judicial practices, gives a stunning negative effect.

Data, trust and user attention are new resources for business today. They bring big profits, but often require work on the borders between law and ethics. That is why, the future international treaty on human rights obligations of the business or other mandatory legal instruments for adoption of the model described above by all UN members are being actively discussed.¹⁰ If an international treaty appears, despite the resistance of businesses and

⁸ Andrade, Norberto Nuno Gomes de. 2011. "Right to Personal Identity: The Challenges of Ambient Intelligence and the Need for a New Legal Conceptualization". *Computers, Privacy and Data Protection: an Element of Choice*: 65–97.

⁹ Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Annex, U. N. Doc. A/HRC/17/31 (Mar. 21, 2011).

¹⁰ See: Aaronson, Susan Ariel, and Ian Higham. 2013. "Re-Righting Business: John Ruggie and the Struggle to Develop International Human Rights Standards for Transnational Firms". *Human Rights Quarterly*. 35 (2): 333–64; Ramasastry, Anita. 2015. "Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability" *Journal of Human Rights* 14 (2): 237–59; Ratner, Steven R. 2001. "Corporations and Human Rights: A Theory of Legal Responsibility". *Yale Law Journal* 111 (3): 443–545; Shackelford, Scott J. 2017.

governments, it will complement the National Action Plans already adopted by some states. National Action Plans provide states with an important tool for fulfilling their duty to protect human rights from adverse business impacts and contribute to the development of regulatory framework in this area at the global level. Those plans may include CGI usage rules that address the problematic issues of its and human rights implications.

One of the features of this model is the obligatory participation in the treaty process and the creation of national plans for all stakeholders, including governments, civil society organizations, businesses, investors, academia, national human rights institutions, regional and international organizations. In the GIScience sphere, such a model may include, for example, coordinating the actions of the scientists, volunteers and users to collect CGI.

Despite the fact that the model remains controversial and debatable, a number of its recommendations could be used as guidelines for the CGI problem. The UN Guiding Principles can be transformed into the Guiding Principles of GIScience activity. National Action Plans could be supplemented by sections relating to the CGI, taking into account proposals from interested parties and the specifics of the legislation and practices of a particular state.

5. Conclusions

I have attempted to outline the importance of the human rights concept for GIScience. And I have provided examples of how the existing practices, as well as totally innovative ones, debatable as they are, they could solve a variety of issues, including GCI.

We have to be ready for the challenges that await us in the very near future. But the problems we have already faced need action too. Forces need to be joined: the forces of governments, the forces of businesses, the forces of academics. All is ripe to take action now.

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