THE INFLUENCERS: DIGITAL TRANSFORMATION

TRANSCRIPT

MARY-ROSE MCGUIRE

Leo von Gerlach (00:24.4)

Hello, everybody, and welcome to another session of The Influencers. With conversations on the digital transformation and law. I'm Leo von Gerlach, and with me today is Mary-Rose McGuire. Mary-Rose is an ordinary professor—full professor, so to say—at the European Legal Studies Institute of the University of Osnabrück, and she is a speaker—she is **the** speaker—of the newly founded research unit, Law and Data Economy. That ties, obviously, very well into one of the focus areas of the University of Osnabrück, who has just founded a newly AI campus, and that's one of the topics we want to speak about today, as is the AI Act of the European Union. But, perhaps, before we do so, Mary-Rose, you just share with us what you're working on at the moment. What keeps you busy?

Mary-Rose McGuire (01:20.2)

Sure. Thank you for inviting me. I think it's a good chance to actually describe what the university can contribute to this area of research. I personally hold a chair for private law, IP law, and German-European civil procedure. At first glance, that sounds like three entirely different areas of law, but, in practice, they really tie into each other. My starting point always is to question how we can foster innovation in the field of technology. So, this requires three things. Obviously, the first step is the protection of the technology itself, usually by IP rights, such as patents and trade secrets, copyrights, maybe, or by means of other legal constructions, as we now, for example, see with the Data Act, which is coming up on the level of the European Union. So, my main research focus is IP law and neighbouring issues, such as the Data Act. But IP law is just a good starting point. There are two further requirements for spreading innovation. The second is a good and secure infrastructure for sharing innovation. Usually, that's a contractual agreement. It could be a transfer or license agreement. And that's why I also hold a chair for private law, and my main focus here is contracts. License contracts, of course, is one of my favourite research subjects. And the first requirement is legal certainty, meaning that all actors in the market must know which law applies and that will be enforced if they don't act in alignment. And that is what civil procedure—or, as I call it, "cross-border litigation"—is all about. So, private law, IP law, and cross-border litigation. So, the short answer to my research area is my research team and I, we work on how we can protect upcoming technology and securely share it without stifling innovation.

Leo von Gerlach (03:08.5): Okay, now I fully understand why everybody calls the world expert on the edge of IP and technology, and I think that ties in nicely with what the university wants to achieve in one of its latest activities, and that's the foundation of this new AI campus. Perhaps you'll tell us a bit of what the story is behind that campus and how that ties into your own work.

Mary-Rose McGuire (03:37.8): Well, I assume that not everyone listening knows where Osnabrück actually is. Osnabrück is a small, I would say, university town in northern Germany. It is a small university by comparison to other German universities. So, our approach is that we don't cover all research areas or faculties. So, for example, you couldn't study medicine in Osnabrück. But, what we do, we strive to do well. And we have renowned faculties for mathematics, computer science, philosophy, cognitive science, business, and law. So, the AI campus seeks to combine all these faculties. But it's nothing which was founded out of the blue. It really is that the AI campus builds on a long-term profile development in the fields of artificial intelligence. So, there were research-oriented units in computer science, cognitive science, business informatics, mathematics. They all had research groups originally. The new thing about this AI campus is that the separate research units of the different faculties are added, they are joined together, and they all have a common research topic. The focus on AI and really everyone combines its own perspective, its methodology, and we work on common projects. That's super important because it's not a theoretical endeavour, we really work in actual projects with our project partners, and we seek to make it work from all the different disciplines and perspectives. So, I've mentioned that there have been research units for cognitive science and business information and so on. So, where does law come in? Actually, the legal department just joined this project three years ago. We, for instance, were working on a project on smart farming, and our approach is that we have to ensure that everything which is developed—the business models but also the technological tools—that they will be apt for running in practice. It's not just a technical issue. It must be possible to actually use them lawfully. And that's our task. So, we work with the project partners, we look into what they're developing, and perhaps they're two different technological possibilities to solve a problem. And then the lawyers come in and say, "Well, if you do it this way, this entails the following duties or the following problem coming up, why not choose a different version of this?" So, lawyers often work—they look at something which has happened, and then they state what the law is, or maybe the criticise the judiciary, but this is totally different. We have to look years ahead and say, "What is developed today? Will go on the market in three or fiver years? What will the framework be in a few years from now?" And that's why work closely with those who actually develop these models and tools, and that's really what makes it so fascinating.

Leo von Gerlach (06:29.0): Well, I can only attest that I've been following you and your institute for a couple of years, and it's just impressive, yeah? How you drive this

interdisciplinary just approach, which seems to be so pertinent, I think, for the problems that we have to tackle at the time and, still, I think those problems are very broad in nature. But, perhaps, let's try to narrow them down a little bit further. You mentioned, at the beginning, something about data, data economy, data licensing. Would it be fair that the data economy and how to treat data from the technology side, from the legal side, from the contractual side—is one of those area you are particularly concerned with?

Mary-Rose McGuire (07:14.8) Yes, of course. And I can give you one example. We're working on a project of smart farming. Now, smart farming means they are using all these new connectivity tools in order to make farming more sustainable. They need, for instance, less water or less resources. Of course, how does it work? The data is combined to find out more details about a certain batch of land, for example. Now, data, from a technological perspective, is just information. But, then, if you take a legal view, it may be all sorts of different things. It may be a trade secret. It may be a copyrighted database. It could be a patented innovation. It could be personal data, which you're not allowed to use. So, what we're doing is we're looking at the technological solutions and the data stream, and we're trying to find out how you can construe it to make sure that it meets all the legal requirements. For instance, if it's a trade secret, you have to protect it. You have to make sure that, whomever you share it with, will also ensure that it doesn't leak out. Or, if it's personal data, you have to ensure—well, maybe we have to exchange the data or synthesise data or whatever to make sure that it is lawful to actually implement what is going on the market later on. Now, when it comes to research, there are a lot of exceptions for research and development, and you may make use of it. But, then, what's the point of having an exception for datamining or maybe using copyrighted or patented inventions if, then, later on, you want to develop it into a business model? They will not be able to rely on these research exceptions. So, we work with a lot of project partners, and our emphasis is not "Is it lawful today?", but "Will it be possible to put this model on the market in three years from now?" And this requires to look at exactly the data stream and optimise it from a legal perspective.

Leo von Gerlach (09:14.5) That's very, very interesting, because, as you said, we are just confronting with something new. I mean, we had data protection, but that's something—a very specific aspect of protective rights against some form of intrusion, but we are speaking here about something different and perhaps more comprehensive: turning data into commercial assets and just giving full light to this new class of right and asset and, clearly, that needs to be supported by law and legislation. And that, perhaps, brings me to the question: Well, we see so many legislative attempts, proposals, drafts coming—in particular from the European Union—let's say the AI Act, the Data Act, the Data Governance Act. Your overall take, is that supportive, does that go in the right direction? What's your view in the broader scheme?

Mary-Rose McGuire (10:11.4) Well, I guess it really depends on the perspective. If you take a close look at the different texts, there is a lot of room for improvement, obviously. And many suggestions have been made, for instance, with regard to the AI Act. And some of them are very sound. I think some of the definitions need more refining, then perhaps some of the duties are just too broad or too strict. In particularly, when we look at small and medium enterprises, we don't want to stifle innovation. There is a lot of criticism that the terms are vague, that the obligations are unclear, that they are too far-reaching, and then really no one knows how you could actually comply with them. Look at all these documentation duties coming in, both under the Data Act and the AI Act. So, how would a small or medium enterprise actually fulfil all these requirements? How long do they have to keep all this information? Does it require blockchain technology in order to, when a lawsuit comes up in ten years, to actually provide evidence on them? So, on the micro level, I think it's quite obvious that there is a lot of room for improvement, and I understand that not everyone is not totally happy with what's coming out of the European Union. So, the answer may be "no". But, if you look at it—at the same acts from a different perspective, so a big picture, I think actually it is a very good development, because these regulations—the AI regulation, the Data Act—they establish a common document we can take as a starting point for a discussion, and it establishes definitions and a common terminology so we actually know what we're talking about. And I think the European Union also takes a very clear stance on the values it seeks to protect. So, the aim is to preserve our European core values, even if this means that we have to restrict technology. And that's a very clear commitment. We also expect that there may be a similar effect as the GDPR had. The GDPR had a very strong influence on other regions of the world. It really established a common standard. And, of course, also, when it comes to data protection, the rule is not without fault. Probably, it's too strict. But it established a new standard which spilled out to other countries and made us able to negotiate with them. So, I think it's a good starting point and a good basis. And I hope that the same would hold true for the current European data strategy and the AI Act and the Data Act.

Leo von Gerlach (12:39.8) That's—no, thank you. That's a very overall positive take on the legislation. There is a challenge, though, because the legislation is always driven by events taking place in technology and technological development. And that is going faster and faster and faster as time progress. So, there is always the risk that the legislation lags behind and the challenge to catch up. Is that a particular risk for a legislation that tries to be as specific as we have on the European draft arena right now? Or what's the solution to that problem of speed and pace?

Mary-Rose McGuire (13:22.2) I fully acknowledge it is a problem. But I don't think there is a solution, because the legislative process is not well-adapted to fast technological changes. That's just a fact. If we look at how democracy in Europe works, if all the member states should be involved, and all the committees, and all

the stakeholders, and everyone has a word to say, then we can't expect legislation in two or three months. It just doesn't work. We can't have all of it. And I think a good comparison or a good concept to look at it is the comparison with the patent system. The patent system also lags behind. The innovation cycle is faster than the patent system. So, if you look at a granting procedure for a patent, it may take two and a half, or three, or even seven years. And, of course, by the time actually the patent is granted, the innovation is not new anymore. But it doesn't mean that the patent system is not valuable. It's a very reliable system. But, if you're looking for a genuine innovation, probably the patent register is not the place to look for. So, the same is with when we look at the legislation of the European Union, it can set a standard, it provides a framework and a terminology with which we can work, but it probably will not solve all the questions we have. Not all the problems. As to the criticism on whether the European legislator should push forward, I think a good test would be what is actually the alternative? If the European Union would not push forward, we would see national data strategies in half of the European countries and probably nothing at all in the other half of the European Union countries because they have other current issues. And I think, even if it's not a perfect framework, it's good that it is a uniform framework.

Leo von Gerlach (15:04.1) I think that is a very wise approach, and we should not—I mean, we should be ambitious but not overly ambitious when it comes to the expectation towards just legislation and how that corresponds to the latest developments in technology. We will always need to work on that and just work on the edges and make it a little bit better. So, that was very, very helpful. Very insightful. Thank you so much, Mary-Rose. I love to talk with you. And thank you, of course, everybody for joining in and I hope you join again to our next episode, which will be forthcoming soon. With that, have a good day all, and take care. Goodbye.