Contents

Tab	le of Cases	xvii	
Table of Legislation			
List	List of Abbrevations x		
	PART I EUROPEAN DATA PROTECTION AND		
	FREEDOM OF EXPRESSION FOUNDATIONS		
1.	Introduction	3	
	1. Aims, Scope, and Methodology	5	
	1.1 Aims	5	
	1.2 Scope	6	
	1.3 Study Sources and Methods	13	
	2. The Book's Core Empirical and Normative Findings	14	
	3. The Plan of the Book	17	
2	The Development of European Human Rights and Freedom of		
	Expression Law	19	
	1. The General Development of European Freedom of Expression and		
	(Civil and Political) Human Rights Law	20	
	1.1 Origins and Post-Second World War Formal Consolidation	20	
	1.2 Limitations on Legal Enforcement prior to the 1970s	20	
	1.3 Development of Legal Protection from the 1970s Onwards	21	
	2. European Jurisprudence on Freedom of Expression	24	
	2.1 European Court of Human Rights: A Hierarchy of Protection	24	
	2.2 European Court of Human Rights: Press Privilege?	27	
	2.3 Court of Justice of the European Union (CJEU) and the EFTA Court		
	Contributions	29	
	3. Codifying Rights and Limits to Freedom of Expression	31	
	3.1 General Situation	31	
	3.2 Broadcasting, Audio-visual Media, and Audio-visual Content	32	
	4. Conclusions	33	
3	The Development of European Data Protection Law and Regulation	35	
5.	1. First-Generation European Data Protection (1970s–1990s)	36	
	1.1 Precursors, Origins, and Transnational Developments	36	
	1.2 Legislative and Constitutional Developments at National Level	38	
	2. Second-Generation European Data Protection (1990s–2010s)	39	
	2.1 Transnational Developments including the DPD and EU Charter	39	
	2.2 Legislative and Constitutional Developments at National Level	43	

	2.3	The Contributions of the CJEU, the EFTA Court, and the	
		Article 29 Working Party	45
3.	Thi	rd-Generation European Data Protection (2010s to present day)	48
	3.1	Transnational Developments Leading to the General Data	
		Protection Regulation	48
	3.2	Legislative Developments at National Level	51
4.	Cor	nclusions	52

PART II EUROPEAN DATA PROTECTION AND PROFESSIONAL JOURNALISM

4.	Fi	rst-Generation European Data Protection Regulation and			
		ofessional Journalism	57		
	1.	First-Generation Legal Instruments and Professional Journalism	58		
		1.1 Pan-European Legal Instruments	58		
		1.2 National Legal Instruments	59		
	2.	Regulatory Implementation of First-Generation Data Protection in			
		Relation to the Professional Journalistic Media	62		
		2.1 State Developments	62		
		2.2 Transnational Developments	66		
	3.	Conclusions and Broader Implications	68		
5.	Se	cond-Generation European Data Protection and Professional			
	Jo	urnalism: Formal Law and Regulatory Guidance	70		
	1.	Second-Generation Legal Instruments and Professional Journalism	71		
		1.1 Pan-European Legal Instruments	71		
		1.2 National Legal Instruments	72		
	18	1.3 Explaining these National Divergences	80		
		1.4 The Relationship between the Statutory Regime and Self-Regulatory			
		Norms and Structures	82		
	2. Regulatory Guidance on the Interface between Second-Generation				
		Data Protection and Professional Journalism	85		
		2.1 Pan-European Article 29 Working Party Guidance	85		
		2.2 State DPA Guidance: An Overview	87		
		2.3 State DPA Guidance: The General Focus on Contextual			
		Rights Balancing	87		
		2.4 State DPA Guidance: The Link with Self-Regulation	90		
		2.5 State DPA Guidance: Specific Issues Given Emphasis	93		
	3.	Conclusions	98		
6.	Se	cond-Generation European Data Protection and Professional			
	Jo	urnalism: Probing Regulatory Standard-Setting	100		
	1.	Exploring the Basic Interpretative Stance of the DPAs	102		
		1.1 Questions Posed	102		

1.2 Results Overview	103
1.3 Relationship with Statutory Law	105
2. Detailed Interpretation and Standard-Setting by the DPAs	106
2.1 Questions Posed	106
2.2 Results Overview	108
3. Exploring the Relationships between DPA Standard-Setting, Statutory	r
Law, and Self-Regulatory Norms	110
3.1 Undercover Journalism, DPA Standard-Setting, and Statutory Law	110
3.2 Subject Access, DPA Standard-Setting, and Statutory Law	114
3.3 DPA Standard-Setting and Self-Regulatory Norms	117
4. General Analysis	120
5. Conclusions	121
7. Second-Generation European Data Protection Regulation and	
Professional Journalism: Probing Enforcement	123
이 같은 것 같은	123
1. The Data Protection Authority (DPA) Questionnaire	124
1.1 Questions Posed	124
1.2 Enforcement Power Stance Findings1.3 Enforcement Action Findings: Scope of Activity	120
1.4 Enforcement Action Findings: Areas of Activity	120
2. The Data Protection Authority Website Review	130
2.1 General Enforcement Findings	131
2.2 Media Archives and Enforcement	137
3. Explaining Divergences in a Regulator's Enforcement Stance and	107
Action: Statutory Law Stringency, Resourcing, or Both?	140
4. Further Analysis	143
5. Conclusions	149
8. Third-Generation European Data Protection Law and Professional	151
Journalism	151
1. The General Data Protection Regulation (GDPR) and Professional	150
Journalism	152
1.1 Overview	152
1.2 Drafting History	153
2. Statutory Substantive Applicability of Data Protection <i>vis-à-vis</i>	155
Journalism	155
2.1 Methodology and Difficulties	155
2.2 Overview of Results	163
2.3 The Data Protection Principles (Dimension A: Provisions (i)–(v))	163
2.4 Transparency Rules (Dimension B: Provisions (vi)–(viii))2.5 Sensitive Data Rules (Dimension C: Provisions (ix)–(xv))	167
 2.5 Sensitive Data Rules (Dimension C. Provisions (IX)–(XV)) 2.6 Discipline Requirements (Dimension D: Provisions (XV)–(XViii)) 	168
 Biscipline Requirements (Dimension D: Provisions (xvi)-(xvii)) Regulatory Supervision of Data Protection vis-à-vis Professional 	100
Journalism	170
3.1 State Regulatory Oversight	170
3.2 Pan-European Cooperation and Consistency	173
5.2 I an European Cooperation and Consistency	1,0

	4. Comparisons of Statutory Stringency <i>vis-à-vis</i> the DPD Era	174
	and between States	176
	5. Formal Statutory Provisions Relating to Self-Regulation	170
	6. Formal Provisions Concerning Professional Journalism and	179
	Media Archiving	179
	7. Conclusions	101
	9. The Future Shape of European Data Protection Regulation	
, N	and Professional Journalism	182
	1. The Contemporary European Jurisprudential Context	183
	1.1 The European Court of Human Rights	183
	1.2 Court of Justice of the European Union	185
	2. The Contemporary DPA Resource Context	187
	3. State DPAs, Professional Journalism, and Standard-Setting	188
	3.1 The Need for, and Dilemma of Data Protection Standard-Setting	189
	3.2 Achieving and Promoting Co-regulatory Standards	193
	3.3 The Particular Dilemma of Media Archives	195
	4. State DPAs, Professional Journalism, and Enforcement	197
	4.1 The General Context	197
	4.2 Crafting a Strategic Enforcement Strategy	198
	5. A Role for the European Data Protection Board?	201
	5.1 Avoiding a Coercive, Non-Deferential Approach	201
	5.2 The Value of Guidance, Consultation, and Voluntary Cooperation	203
	6. Conclusions	204

PART III EUROPEAN DATA PROTECTION AND 'NON-JOURNALISTIC' TRADITIONAL PUBLISHERS

10.	European Data Protection Regulation and 'Non-Journalistic'	
	Traditional Publishers: First- and Second-Generation Developments	
	Outside Academia	209
	1. Legal Instruments and Professional Writers and Artists	210
	1.1 First-Generation Legal Instruments	210
	1.2 Second-Generation Legal Instruments	212
	2. First-Generation DPA Standard-Setting and Enforcement	215
	3. Second-Generation DPA Standard-Setting and Enforcement	217
	3.1 Standard-Setting Guidance	217
	3.2 Enforcement	220
	3.3 Explaining National Divergences under the DPD	222
	4. Final Analysis and Conclusion	222
11	European Data Protection Regulation and Academic Publishers:	
11.	First- and Second-Generation Developments	224
	1. 'Knowledge Facilitation' Provisions in First-Generation Legal	
	Instruments	226
	1.1 Pan-European/Transnational Legal Instruments	226

		1.2 National Legal Instruments	228
	2.	'Knowledge Facilitation' Provisions in Second-Generation	
		Legal Instruments	229
		2.1 The Data Protection Directive 95/46	229
		2.2 National Legal Instruments	231
	3.	DPA Guidance on Academic Research and Publication	232
		3.1 First-Generation DPA Guidance	232
-		3.2 Second-Generation Pan-European DPA Guidance	233
		3.3 Second-Generation State DPA Guidance	234
	4.	Second-Generation Regulatory Standard-Setting as Revealed in	
		the DPA Questionnaire	239
		4.1 Question Posed	239
		4.2 Results	240
		4.3 Discussion	241
	5.	DPA Enforcement in Relation to Academic Research	
		and Publication	242
		5.1 First-Generation DPA Enforcement	242
		5.2 Second-Generation DPA Enforcement	245
	6.	Conclusions	249
12.		Ion-Journalistic' Traditional Publishers and Third-Generation	
	Εı	ropean Data Protection Regulation: Formal Law and the Future	252
	1.	Third-Generation Data Protection Law and 'Non-Journalistic'	
		Traditional Publishers	254
		1.1 The GDPR and its Drafting	254
		1.2 National Legal Instruments	256
	2.	State DPAs, 'Non-Journalistic' Traditional Publishers, and	
		Standard-Setting	259
		2.1 An Initial Threshold Issue: Delimiting the Scope of	
		Special Expression	259
		2.2 A Continuing Role for the Knowledge Facilitation Regime?	262
		2.3 Crafting and Disseminating Guidance	263
	3.	State DPAs, 'Non-Journalistic' Traditional Publishers,	
		and Enforcement	267
	4.	The European Data Protection Board	269
		Conclusions	270

PART IV CONCLUSIONS

Balancing on a Tightrope in an Age of New Online Media?	275
1. The Continuing Direct Significance of Data Protection's	
Regulation of Traditional Publishers	277
2. The Indirect Significance of the Book's Core Themes to New	
Online Media	279
2.1 The Importance of Contextual Balancing	279
	 The Continuing Direct Significance of Data Protection's Regulation of Traditional Publishers The Indirect Significance of the Book's Core Themes to New Online Media

	2.2 The Role and Design of Co-Regulation	282
	2.3 The Need for Robust and Strategic Enforcement	285
3.	The Growing Centrality of Data Protection Regulation	286
	APPENDICES	
1	First-Generation European/EEA Data Protection Statutes	
1.	(up to 1990)	289
2	Second-Generation European/EEA Data Protection Statutes	209
	Third-Generation European/EEA Data Protection Statutes	291
5.	(as of May 2019)	200
Λ	Second-Generation European Data Protection Law and	298
4.	Professional Journalism	204
5	그는 것 같은 것 같	304
5.	Second-Generation European Data Protection Regulation,	207
6	Professional Journalism and Hofstede et al. Cultural Variables	307
	European/EEA Self-Regulatory Journalism Codes	311
1.	Third-Generation European Data Protection Law and Professional	
0	Journalism (as of May 2019)	316
8.	European Data Protection, 'Non-Journalistic' Special Expression,	
	Social Science and 2017 DPA Resources	319
Notes		323
Index		417