Data mining and aspects of private law

Abstract

Data is the new oil. As oil can be transformed into valuable products data can be transformed into information about our customers, competitors, contractual partners or audience. No matter whether online advertisements, recommender systems, internet search engines, so-called personalisation is ever-present. As of now, neither private nor public law provides throughout regulation of data and its exploitation.

Some might say that words, data and information are interchangeable. This applies particularly to older regulations of the European Union such as GDPR. However, data and information are two very distinct yet connected terms. Besides that, in the first chapter we elaborate on the concept of data mining, its methods and utilization.

In the second chapter we point out relevant regulation within private law, including regulation of the European Union and its pursuit of fairness in access and use of data. Furthermore, we evaluate suitability and sufficiency of the current state of regulation and suggest changes and amendments. We focus on personal data, intellectual property rights and anti-competitive practices.

Some might argue that as of now there are no sufficient provisions ensuring transparent use of data. In the third chapter we evaluate whether current state of regulation provides sufficient transparency.

As of now, the regulation is certainly lacking as there are cases with multiple provisions applicable and cases with none. The source of this deficiency is the limited scope of each provision. GDPR, as an example, mandates controllers to inform data subjects and provides data subjects with sufficient rights to exercise control over their data, but in cases such as profiling and automated individual decision-making, the applicability of these provisions is somewhat limited. Some provisions, such as sui generis database protection, are full of indefinite legal concepts that reduce legal certainty. Recent legislation of the European Union, such as Data Act, responds to current deficiencies and provide complex regulation of data-oriented relationships.

Klíčová slova: private law, data mining, transparency