The New Evidential Fingering of the 21st Century
Review of: *Social Networking; Law, Right and Policy*

Paul Lambert
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"*Social networks are becoming the new evidential fingering of the 21st century.*"[1]

Paul Lambert's *Social Networking Law, Rights and Policy* gives a deep analysis of the complex legal, technical, and policy issues arising from social networking.[2] Paul Lambert is a Solicitor at Merrion Legal, Lecturer at NUIG, and PhD candidate at TCD. He is considered to be a specialist in the areas of data protection, media, communications, internet, information technology, courtroom broadcasting, technology and courts, informational technology law, and intellectual property law. Lambert is a renowned author in the U.S., United Kingdom, and Ireland. Lambert is the author of *Courting Publicity: Twitter and Television Cameras in Court*; *Television Courtroom Broadcasting, Distraction Effects and Eye-Tracking*; *Television Courtroom Broadcasting Effects: The Empirical Research and the Supreme Court Challenge*; *Data Protection in Ireland: Sources and Issues*; and *A User's Guide to Data Protection*. He is also a public speaker who has appeared at various seminars in Europe.

The book is divided into twelve parts, each with multiple subchapters further exploring the main section topic. Each chapter contains "headline issues" to guide the reader on the respective topics being discussed. The first section is a general introduction and guide on how to

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[1] *See* Paul Lambert, SOCIAL NETWORKING LAW, RIGHTS AND POLICY, 253, (2014).
[2] *See* CLARUS PRESS (last visited Feb. 3, 2015), *available at* http://www.claruspress.ie/shop/social-networking-law-rights-and-policy/.

read the book.[3] The book is structured in a way to allow the reader to read and focus on a

specific chapter without losing the overall message presented. Lambert starts by pointing out

that whether you are a consumer, parent, educator, policymaker, individual or organization, or

have never used the web, you are still susceptible to the effects of the internet.[4] Part two—The

Internet and Social Networking, gives a brief history of how the internet's development and

describes what constitutes as "social networking.[5]" Part three—Social Networks, discusses the

increasingly popularity of the User Generated Content (UGC), the ability for users to have "an

active role in the publication of content.[6]" UGC started in 2005 and has been the main triggering

cause for users and providers liability disputes.[7] Part four—Social Networking and Evidential

Issues, discusses the legal implications of using online communication as a primary form of

communication.[8] Part five—Employees and Education, focuses on the liability issues employers

confront with monitoring their employee's online activity.[9] It also discusses issues of

defamation, online abuse, and regulation of freedom of speech and association, teachers,

employees, parents, and students deal.[10]

Part six—Personal Issues, focuses on the industry of behavioral tracking.[11] This industry

monitors internet users and gathers data to create profile about the user's interests.[12] Lambert

describes this industry as a person walking around following you with a camera and a notebook

recording every single movement.[13] Part seven—Children and Social Networking, discusses the

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[3] *See* Lambert, *supra* note 1, at 3.
[4] *See* Lambert, *supra* note 1, at 3.
[5] *See* Lambert, *supra* note 1, at 9.
[6] *See* Lambert, *supra* note 1, at 83.
[7] *See* Lambert, *supra* note 1, at 84.
[8] *See* Lambert, *supra* note 1, at 245.
[9] *See* Lambert, *supra* note 1, at 279.
[10] *See* Lambert, *supra* note 1, at 280-291.
[11] *See* Lambert, *supra* note 1, at 307.
[12] *See* Lambert, *supra* note 1, at 308.
[13] *See* Lambert, *supra* note 1, at 308.

social and legal issues with online abuse such as cyber bullying, sexual exploitation, and exposure to harmful content.[14] Part eight—Social Networking and Internet Access, explores the issues of banning certain individuals, such as convicts, from social networking websites.[15] An interesting discussion presented is that access to internet is a "human right"; but should it be weighed against the safety of child safety?[16] Part nine—Social Networking, Peer to Peer and Privacy, discusses the issues arising between social networking and intellectual property.[17] This section explores the legal implications of the film and music industries forcing internet providers to disclose their users' information in order to effectively monitor the use of their work.[18] Part ten—Social Networking and Sport, discussed the entitlement to limit athletes' access to social networks.[19] Part eleven—Social Networking and Courts, explores the legal tensions between the courts and technology.[20] Although, one could assume posting information of ongoing cases is prohibited, the court has dealt with mistrials because such indication was not that as obvious.[21] Part twelve—Data Protection: The Future, reviews the methods of privacy protection.[22] Lambert warns us that that legal procedure of privacy and data protection are and will continue to grow in order to maintain a balance between technological advances and the right to privacy.[23]

   This review will only focus on the following sections: Social Networks, Social Networks and Evidential Issue, and Data Protection: The Future. In Social Networks, one of the topics Lambert addresses is the popular trend of "Tagging." Tagging is described as the ability to

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[14] *See* Lambert, *supra* note 1, at 359.
[15] *See* Lambert, *supra* note 1, at 403.
[16] *See* Lambert, *supra* note 1, at 404.
[17] *See* Lambert, *supra* note 1, at 413.
[18] *See* Lambert, *supra* note 1, at 414.
[19] *See* Lambert, *supra* note 1, at 433.
[20] *See* Lambert, *supra* note 1, at 457.
[21] *See* Lambert, *supra* note 1, at 458.
[22] *See* Lambert, *supra* note 1, at 471.
[23] *See* Lambert, *supra* note 1, at 503.

upload photographic and video footage to social networks.[24] This feature has immensely contributed to the staggering popularity of social networking use. All material uploaded can be labeled and described, giving the user the power to direct the way the content will be perceived in their social networks. Lambert illustrates the effortless ways to photograph people, copy, distribute, and share their images, with or without their consent.[25] For example, images can be taken with on Google Glass, without the person being photograph even noticing.[26]

What happens when the uploaded material contains a third party, who is not aware of the post or took the picture or video? This is question currently being addressed by the courts and the legislature. The dispute is specifically over the third party's privacy rights, if any, violated when the content was uploaded. Lambert explains that to avoid having your picture online, without your consent, you can simply ask the user to take it down or to detag you.[27] However this resolution does not eliminate the risk of other people seeing, copying, and sharing your picture among their networks. Lambert raised the point that not "everyone is a member of a social network, or of the particular social network where the image is posted or tagged" therefore the simple "detagging" solution is not effective on its own.[28] Lambert proposes a solution to the development of software that will give the user full control of their photographs, including where it can be posted, who can coping or altering heir images, and setting time limits of when the pictures will delete on their own.[29]

Initially, Facebook only allowed the original uploader to tag people; however in 2012 it extended the ability to any user within the same network to tag pictures uploaded.[30] Later on

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[24] *See* Lambert, *supra* note 1, at 237.
[25] *See* Lambert, *supra* note 1, at 238.
[26] See Lambert, *supra* note 1, at 238.
[27] *See* Lambert, *supra* note 1, at 239.
[28] *See* Lambert, *supra* note 1, at 239.
[29] *See* Lambert, *supra* note 1, at 493.
[30] *See* Lambert, *supra* note 1, at 240.

Facebook went as far as creating facial recognition software, which provides suggestions on the identity of the person based on facial recognition. Lambert introduces a discussion of the impact of facial recognition and how international jurisdictions have addressed it. After an audit report conducted by the Irish Data Protection Commissioner, the facial recognition was removed in the E.U.[31] Lambert informs us that there is a need for further research and development of technical solutions and social networking policies.[32]

Another interesting concept Lambert writes about is the evidential issue arising with the popular use of social networks. Although social network content is being admitted as evidence, superior courts still have yet to consider whether this type of evidence should be used and when it should be used. Resolution of family disputes, such as divorces or separation, have relied heavily on social networking postings, photographs, comments, and other content. Lambert mentions one case, where a woman lost her child's custody after the court took into consideration evidence of her boyfriend's sexually explicit comment on his MySpace profile.[33] At sentencing in a criminal case, the court considered pictures of the defendant drinking after being involved in fatal drinking and driving accident, as a sign the defendant did not have any remorse.[34] This type of information is easily accessible when the parties of the dispute are friends on a social network. However, lawyers can also manipulate friend request to get access to such information. Whether such conduct as that will be considered unethical has not been resolved yet.

Lambert further explores the concerns with making social network information discoverable. He explores the economic ability to produce every posting, email, or conversation

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[31] See Lambert, *supra* note 1, at 240.
[32] *See* Lambert, *supra* note 1, at 241.
[33] *See* Lambert, *supra* note 1, at 248.
[34] *See* Lambert, *supra* note 1, at 249

for a certain time period due to the amount of time it would take to sort it out, the ability to produce the information in an understandable format, and how to determine what information is relevant to the dispute at hand.[35] Lambert suggests that the issue of preservation should be dealt with in advance rather than in individual situations.

Lastly, Lambert closes off with a discussion of the data protection in the future. He points out that as technology continues to develop so will issues of privacy. He discusses proposed solutions such as the implementation of data protection from the initial design of the product or service, also known as Privacy by Design (PbD). PbD's philosophy is of "embedding privacy proactively into technology itself—making it the default."[36] He suggests that more research is required in this field to explore the proposed solutions. Regardless of the solution, Lambert encourages readers to embrace a solution because social networking and cloud computing affect many more individuals at an incredible speed, something no other technology has done before. Lambert cautions us on the need to evolve from the "first generation information privacy law" to effectively address and resolve issues arising out of the internet's second generation privacy and data protection disputes.[37]

I would recommend this book to anyone interested in learning about legal or social issues dealing with social networking. It is a book that does not require the reader to have prior knowledge of privacy or data protection law; it simply requires you to have some sort of awareness of the Internet's existence, and that is practically everyone. The material presented will be particularly useful to a reader in the legal field, however this information can also be useful to the average person who is using one of the popular social networking website such as Facebook, Instagram, Twitter, or LinkedIn.

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[35] *See* Lambert, *supra* note 1, at 253.
[36] *See* Lambert, *supra* note 1, at 471.
[37] *See* Lambert, *supra* note 1, at 503.

Lambert presents common and very complex issues involving data protection, privacy, and internet use which have yet to be addressed and those who have been resolved. The material presented will serve as invaluable reference and good source to further your research on one of the topics presented. Lambert has reputable experts of this field contributing to his work, giving the reader different perspectives on issues of privacy and solutions proposed. Furthermore, Lambert not only discusses the issues dealing with social networking in the U.S. but also those in Europe. Allowing the reader to see how two prominent nations are addressing and resolving these legal issues is extremely informative.

As someone who is new to exploring the legal and social issues behind social networking, reading this book will give you great insight to understand social networking and the legal, technological, and policy the issues associated with it. Lambert's method of structuring the book into twelve parts with subchapters and further breaking down each chapter into individual topics made it extremely easy to navigate trough book. Although, technical terms are used through out the book, the language is comprehensive enough that the average reader would be able to keep up with Lambert's discussion.