

Impact case study template (REF3b)

<p>Title of case study:</p> <p><i>State and corporate power, human rights and privacy in the emerging digital environment</i></p>
<p>1. Summary of the impact</p> <p>This case study describes the impact of the work by Professor Douwe Korff, usually working with Dr Ian Brown of the Oxford Internet Institute and UK and European non-governmental organisations, on the policies of the EU and the Council of Europe relating to the Internet, ubiquitous computing and the use of social media. The issues addressed range from freedom of expression on the Internet and the use of social media for political activism to the human rights aspects of the proposed (but defeated) anti-counterfeiting agreement, ACTA, but the work focusses on data protection. Specifically, the work impacted on the drafting of the proposed EU Data Protection Regulation; on European policies on privacy and terrorism, social media and free speech; on the priorities of the Council of Europe in relation to the Internet and cybercrime; and on the defeat of ACTA.</p>
<p>2. Underpinning research</p> <p>Douwe Korff has been closely involved in data protection since the 1980s, when he advised Amnesty International (where he had previously been Head of Europe Research) on the implications; in the 1990s when he advised the European direct marketing association FEDIM/FEDMA and major international companies on first the various drafts and then the adopted text of the 1995 EC Data Protection Directive, and wrote a book, <i>Data Protection Law in Practice in the EU</i> (2005); and since when he has carried out many studies in the area for the European Commission, the UK Information Commissioner, the Council of Europe and others.</p> <p>Since 2004, he has been a member of the Advisory Council of the <i>Foundation for Information Policy Research</i> (FIPR), the leading UK think-tank in this field, and has worked closely with other non-governmental organisations such as <i>Privacy International</i>, <i>Liberty</i>, <i>No2ID</i>, and at the European level the <i>European Digital Rights Initiative</i>, EDRI, and its member organisations. He is also closely involved with the directorates, offices and units in the EU and the COE that are responsible for or interested in data protection and related issues, including the EU's unit responsible for data protection, the COE unit for data protection and cybercrime, and the COE Commissioner for Human Rights. In recent years, data protection and information policy issues that had earlier been seen as rather specialised and technical have become directly linked to more traditional human rights issues, e.g., in relation to Internet surveillance and censorship, compulsory retention of communications data, profiling, and the use of social media in political activism. They also relate to global Internet governance, the transnational fight against cybercrime, and corporate responsibilities.</p> <p>From 2004, Korff worked closely with Dr Ian Brown, Associate Director of the Cyber Security Centre and Senior Research Fellow at the Oxford Internet Institute of the University of Oxford. The strength of their research lies in linking Korff's legal knowledge of human rights and data protection law, with the technical and governance/policy insights of Brown and other experts in FIPR and other NGOs just mentioned. With them, Korff has written on Children's databases, The Database State, the Anti-Counterfeiting Agreement (ACTA), the need for a new EU data protection regime in the light of new technologies, and on human rights-compatible rules on technologies used in the fight against terrorism and to monitor political activities online and in social media.</p> <p>Key researchers:</p> <p>Douwe Korff, Professor of International Law, London Metropolitan University</p>

<http://www.londonmet.ac.uk/depts/lgir/law/staff/professor-douwe-korff.cfm> SSRN page:
<http://ssrn.com/author=1098072>

Ian Brown, Associate Director of the Cyber Security Centre and Senior Research Fellow at University of Oxford & Oxford Internet Institute <http://www.oii.ox.ac.uk/people/brown/>
SSRN page: http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=892424

3. References to the research

Digital Freedoms in International Law: Practical Steps to Protect Human Rights Online (with Dr Ian Brown of the Oxford Internet Institute), Study for the Global Network Initiative, June 2012 (54 pp.) Available from Global Network Initiative website (also for the executive summary): <http://www.globalnetworkinitiative.org/resources/index.php>

Social Media and Human Rights (with Brown). Chapter in: *Human Rights and a Changing Media Landscape*, Council of Europe Publishing, December 2011, pp. 175 . 206. Available from COE CommHR Publications list:
http://www.coe.int/t/commissioner/Publications_en.asp

Opinion on the compatibility of the Anti-Counterfeiting Trade Agreement (ACTA) with the European Convention on Human Rights & the EU Charter of Fundamental Rights (with Brown). Legal opinion prepared at the request of the Greens/ European Free Alliance group in the European Parliament, 68 pp. plus attachments. Available from Greens/EFA page on %ACTA and fundamental rights+(scroll to the

Comparative study on different approaches to new privacy challenges, in particular in the light of technological developments (with Brown and a world-wide team of data protection experts). *Reports and papers produced for this study by Professor Korff as the lead drafter, but with Dr Ian Brown et al.: Final Report* (56 pages), with a 5-page *Executive Summary*. *Written by Professor Korff as the sole author: Working Paper No. 2: Data protection laws in the EU: The difficulties in meeting the challenges posed by global social and technical developments* (120 pages); *Country Reports on France, Germany and the United Kingdom* (respectively 54, 60 and 73 pages). Study commissioned by the European Commission Available from http://ec.europa.eu/justice/policies/privacy/studies/index_en.htm

Protecting the Right to Privacy in the Fight Against Terrorism. %Issue Paper+of the Council of Europe Commissioner for Human Rights, November 2008, 16 pp. Available from COE CommHR Issue Paper list (scroll to [2008]3):
http://www.coe.int/t/commissioner/Activities/IPList_en.asp

Key grants: Above-mentioned work commissioned by the organisations mentioned.

4. Details of the impact

(a) Impact on EU data protection policy:

The 2010 Korff-Brown %New Challenges+report was specifically commissioned by the EU to inform its thinking on %post-Lisbon+reform of the EU data protection regime, and this was clearly reflected in the November 2010 Commissions Communication on the issue (see at 5, below). Subsequently, many of the issues identified in the report - e.g., lack of harmonisation, lack of consistent enforcement, the need to deal with new technologies and the Internet - were addressed in the 2012 draft EU Data Protection Regulation, currently in the process of being adopted, that will replace the current EC Data Protection Directive, often in ways suggested in the report.

(b) Impact on the work of the CofE Data Protection & Cybercrime Unit:

Korff& research has also impacted on the work of the Council of Europe& Data Protection and Cybercrime Unit and of the CofE Commissioners for Human Rights.

DP&C Unit: In 2012, Korff advised the DP&C Unit on the human rights implications of the

Cybercrime Convention. In 2013, he was asked to advise on the Unit's priorities in relation to the Internet.

Commr for HR: In 2008, the then Commissioner for Human Rights, Thomas Hammerberg, published an *Issue Paper* on *Privacy & Terrorism*, written by Korff, as the official statement of the Commissioner's position. In 2011, he included a chapter on *Social Media & Human Rights*, written by Korff and Brown, in another major CofE publication. Korff continues to advise the Commissioner's office on data protection and Internet-related matters, including in 2013 training Commissioner's staff on these issues. The current Commissioner, Nils Mui0nieks, continues to involve Korff closely in relevant work. Later in 2013, Korff will write an *Issue Paper* for this Commissioner, on *The Rule of Law on the Internet*.

(c) Impact of the Opinion on ACTA:

Korff largely wrote The Opinion on ACTA, influential in (1) Europe-wide civil society campaigns against the Agreement, and (2) helping to defeat the Agreement in the European approval process. NGO websites disseminated The Opinion, and it was cited in the (reluctant) referral of the Agreement by the European Commission to the ECJ, specifically on the issue addressed in the Opinion: the (in)compatibility of the Agreement with EU human rights principles. The Opinion was also cited in the Third Party (*Amicus*) Brief that a leading civil society group, FFII, tried unsuccessfully to the Court.

(d) Impact of the GNI “Digital Freedoms” report:

The 2012 Korff-Brown report for the Global Network Initiative on *Digital Freedoms in International Law* has been widely discussed in Internet governance forums, including EuroDIG, the European part of the global Internet Governance Forum (IGF).

5. Sources to corroborate the impact (

Re impact of the “New Challenges” report on EU data protection policy:

See in particular the EU Commission Communication to the Parliament and the Council (and others) on *A comprehensive approach on personal data protection in the European Union*, Brussels, 4.11.2010, COM(2010)609 final, more specifically the very first section whose heading reflects the report: *New Challenges for the Protection of Personal Data*, and the text of which deal with the main issues addressed in the Korff-Brown report; it is expressly referred to in footnote 4 on p. 3. See:

http://ec.europa.eu/justice/news/consulting_public/0006/com_2010_609_en.pdf

Re impact on the work of the CofE Data Protection & Cybercrime Unit:

The impact of Korff's research on the work of the Unit is mainly behind the scenes, e.g., through notes such as this one on *The use of the Internet & related services, private life & data protection: trends & technologies, threats & implications*, 2013:

[http://www.coe.int/t/dghl/standardsetting/dataprotection/tpd_documents/KORFF%20-%20Trends%20report%20\(final\)%20-%20March2013%20\(14%2005%202013\).pdf](http://www.coe.int/t/dghl/standardsetting/dataprotection/tpd_documents/KORFF%20-%20Trends%20report%20(final)%20-%20March2013%20(14%2005%202013).pdf)

or the making of presentations or moderating of sessions at relevant expert meetings, such as this one in Baku, Azerbaijan, in November 2012 (a *pre-IGF* conference on Article 15 [the human rights provision] of the Cybercrime Convention):

[http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy_project_Phase3_2571/2571_IGF_WS_art15_outline_v8_31oct12%20\(2\).pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/cy_project_Phase3_2571/2571_IGF_WS_art15_outline_v8_31oct12%20(2).pdf)

Re impact on the work of the office of the CofE Commissioner for Human Rights:

See the 2008 *Issue Paper* on Protecting the Right to Privacy in the Fight Against Terrorism (one of the four Korff outputs in this REF submission) through which the then Commissioner for Human Rights adopted the text, written by Douwe Korff, as a formal statement of his own position. As noted in section 4, a further *Issue Paper* is being written for the current Commissioner, Nils Mui0nieks, in 2013. Korff's research also

again has significant behind-the-scenes impact on the work of the Commissioner's office (see Testimonials, below).

Re impact on the defeat of ACTA:

Korff did not himself take an active part in the %Stop ACTA+campaign (other than co-presenting the Korff-Brown Opinion at a press conference at the European Parliament), but the Korff-Brown Opinion was widely used by civil society groups campaigning against the Agreement, published on or linked to at many civil society websites, e.g.

EDRI: <http://www.edri.org/edriagram/number9.19/acta-documents-secret> <http://rfc.act-on-acta.eu/fundamental-rights>
La Quadrature du Net: <http://www.laquadrature.net/fr/douwe-korff-ian-brown-acta-fait-manifestement-et-de-maniere-disproportionnee-pencher-le-respect-de-l>
StopACTA: <http://www.stopacta.com/> (5th link in right column)
FFII: <http://acta.ffii.org/?p=1156>
IPWatch: <http://www.ip-watch.org/2011/09/08/still-a-long-way-to-go-for-anti-counterfeiting-trade-agreement/>
KSNH (law firm): <http://blog.ksnh.eu/en/2011/10/04/epic-battle-on-ratification-of-acta-is-looming/>
Computerworld: <http://computerworld.co.nz/news.nsf/news/legal-expert-says-acta-should-be-scraped>
EuropeInTheWorld: <http://www.schoolvoorjournalistiek.com/europe/?p=4244>
LivingTheEuropeanDream: <http://livingtheuropeandream.blogspot.co.uk/2012/03/four-human-rights-concerns-about-acta.html>

A Google search for %ACTA+%Opinion+%Korff+on 26 August 2013 produced 189,000 results. The Opinion was also referred to in the (reluctant) referral of ACTA by the European Commission to the ECJ and in the Third Party (*Amicus*) Brief that the leading campaigning organisation, the Foundation for a Free Information Infrastructure (FFII) sent to the ECJ: see: <http://people.ffii.org/~ante/acta/FFII-ACTA-amicus-brief-2012.pdf>

Re impact of the GNI “Digital Freedoms” report:

Simultaneous with its release in Washington DC (attended by Dr Ian Brown), the report was presented by Korff at the most important European Internet Governance forum, EuroDIG, in Stockholm in 2012, where he also moderated one of the plenary sessions, on *Online Privacy: One Size Fits All?*, see:

<http://www.eurodig.org/eurodig-2012/programme>

A further presentation was made in London on 20 June 2012. The report was widely reported, commented on and blogged. A Google search on 26 August 2013 provided 4,120 results, including:

<http://globalnetworkinitiative.org/news/new-report-outlines-recommendations-governments-companies-and-others-how-protect-free>
<http://b2fxxx.blogspot.co.uk/2012/06/gni-digital-freedoms-report.html>
<http://clpr.org.in/gni-report-on-digital-freedoms-in-international-law/>
<http://netizenproject.org/2012/06/18/global-network-initiatives-digital-freedoms-report/>
<http://katewestmoreland.wordpress.com/2012/06/15/digital-freedoms-in-international-law-at-last-a-great-conversation-starter-in-the-field-of-law-enforcement-human-rights-and-technology/>
<http://www.slideshare.net/blogzilla/digital-freedoms-in-international-law>
<http://www.ihrb.org/pdf/eu-sector-guidance/Global-Network-Initiative.pdf>