Legal Challenges of Industry 4.0 in particular robotics & big data

The German perspective

Brussels 13.06.2016
Structure

1. Liability
2. E-person
3. Big Data
   a) Data ownership
   b) Data privacy
Product Liability

- Automated product
- Truly autonomous systems/products
- Product liability
Product Liability

product liability/manufacturer liability

cars: liability of registered owner and driver

tendency by courts of applying quasi-absolute liability

not necessary existing system is sufficient

existing law

current law

new law

automated products

not necessary existing system is sufficient

automated products
Product Liability

- Truly autonomous systems

According to current law

- Developer of software?

+ In general responsible for software & consequences
- Complexity of real world

Manufacturer of machine?

- Modern machines are adaptive
- Provability of fault is difficult

User?

- No full control by user
- Cars: registered owner? politically not desirable

P: Distinction between regular use & abuse

(-) politically not desirable
Product Liability

- Truly autonomous systems
- Complete allocation of liability under current law not adequate
- New strict absolute liability & insurance solutions
- E-person?
- User/registered owner of car (no)
- Developer of software (no)
- Manufacturer of machine (possible)
E-person

- e-Person
- existing contract law
- "declaration of will of an e-person" incorporation into declaration of will by a natural person
- attribution to a natural person possible, existing means of civil law are sufficient
- liability
- dealing adequately with risk
- insurance obligation for e-person
- establish a fictional body (e-person) to attribute and ensure liable assets
Big Data

a) data ownership
b) data privacy
Big Data

a) data ownership

- current law
- term of non-personal data
- potential new law
- reasons for new law?
Big Data

a) data ownership

- Term of non-personal data
  - code level
  - level of meaning

- Current Law
  - data privacy (Regulation 2016/679)
  - data base law (Database-Directive 96/9/EC)
Big Data

a) data ownership

- reasons for new law
  - incentive function? – however: No creativity to be protected, information should be free
  - transparent simple markets? – however: Is there a market failure at all?
  - balancing power gaps? – however: there are other legal concepts in place e.g. antitrust/competition law

- potential new law
  - new specific legislation/ code on data ownership not necessary
  - further development of the concept of data base law could be an option
  - at present parties seek solutions by designing and negotiating special data “license”contracts
  - competition law could be a legal framework to enable access to data
Big Data

b) data privacy

- informed consent
  Art. 6 No. 1 lit a) Regulation 2016/679

- legal justification
  Art. 6 No. 1 lit b)-f) Regulation 2016/679

- data minimisation
  Art. 5 lit c) Regulation 2016/679

- principle of specified purpose
  Art. 5 lit b) Regulation 2016/679

obstacles

data privacy

solutions

- standardised consents
- anonymisation/ pseudonymisation
- personal data as means of payment?
  recital 13, 33, Art. 3 of proposal of directive COM (2015), 634 final

privacy by design/ by default
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Prof. Dr Peter Bräutigam is a certified specialist in IT law in Munich and a partner. He is Coordinating Partner in charge of Noerr’s Commercial division and a member of the IT, Outsourcing & Data Privacy Practice Group.

He advises clients on all aspects of IT law and digitalisation/Industry 4.0 with a focus on the following topics: software development and maintenance agreements, framework and project agreements, outsourcing and service level agreements, cloud computing, data protection, rights to data, cyber-security, liability issues, (software) licensing law matters, networking and problems in the field of IP.

In addition to his many years of practical experience, he regularly issues publications and gives talks on current topics in digitalisation and IT law. He co-edits the study and legal opinion paper Digitalisation/Industry 4.0 published in conjunction with the industry association BDI as well as the legal handbooks IT-Outsourcing and Cloud-Computing (3rd edition) and E-Commerce (to be published in summer 2016). He is also a member of the editorial board of Computer und Recht (CR) magazine, a co-editor of the legal journal NJW and honorary professor at the University of Passau.

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