Conference Statement Regarding Data Protection

Explanation and Disclaimer:

At the session on Possible Conference Statement and Follow-Up Conferences, it was agreed to draw up a statement expressing concerns regarding the threat to academic freedom from data protection law and practice. Although this statement reflects a consensus among the British participants who attended this final Conference session, it should not be read as reflecting the opinion of particular individuals who attended this session or the Conference.

Academic Social Inquiry and Data Protection

Whilst in no way disputing the importance of ensuring the proper protection of personal privacy or the increasing threat to this value in the face of ever greater technological processing power, this Conference views with concern the negative impacts which current data protection law and practice is having on the conduct of academic inquiry into the social (including political and historical) realm.

The mainstream view propounded within the European Union and beyond is that such work may only benefit from often very narrow ‘research’ provisions within these laws. Data protection law was designed primarily with public and private sector administrative processing in mind. The ‘research’ provisions were principally designed in order to reconcile this law with medical and statistical investigations. Therefore, both the fundamentals of data protection and the special provisions for ‘research’ sit uneasily with the nature of academic social inquiry, including inquiry involving participant observation, which adopts a critical perspectives or which involves the study of contemporary historical events. Indeed, data protection laws may have a marked impact on these types of inquiry.

The requirements which such laws can impose in relation to notifying data subjects of data processing, prohibiting certain forms of ‘sensitive’ personal data processing and the general ban on the export of data absent ‘adequate protection’ are in clear tension with social investigations which, on occasion, do use covert methods, identify specific individuals and may even, in relation to the study of publicly accountable behavior, cause an element of (warranted) harm or distress. An added difficulty has been that these constraints are often interpreted strictly by ‘risk-averse’ university structures. Finally, the fact that in a number of data protection laws these activities are held to require a license from the data protection authority is not only unmanageable but can come to constitute a form of arbitrary censorship. Thus, covert methodologies have played a vital role in shedding light on problematic social practices including police attitudes which conflict with the rule of law, and on the internal operations of extreme right-wing organizations. Meanwhile, the vital role of contemporary history of “speaking truth to power” may require “inquiry that does challenge, that may be adversarial, that may even ‘expose,’ as interviews with Klansmen and women and with...

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1 Notable classics here are Simon Holdaway’s Inside the British Police (1982) and Nigel Fielding’s The National Front (1981).
Nazi collaborators have done.”³ However, although clearly in the public interest, these activities are being chilled by a new legal and regulatory framework spawned by poorly conceived data protection law. For example, it has been argued that the Data Protection Act 1998 makes all covert research in the UK “almost certainly” illegal.⁴

At the same time as labyrinthine stipulations have been imposed on academic work, far more liberal provisions have been carved out for non-academic work in the name of journalism, literature and/or art. Granting protection for what can often amount to little more than titillating ‘infotainment’, whilst imposing serious restraints on important and publicly interested academic studies, effectively turns a coherent protection of freedom of expression on its head. In producing books, articles and other work for the public, academic social investigators are processing for ‘literary’ and possibly even ‘journalistic’ purposes and therefore should also benefit from these exemptions.

This conference therefore resolves that:

- Regulators, governments, universities and other interested parties should clearly establish that academic social investigation can and should benefit from the free expression protections within data protection law for ‘journalism’ (and in many case ‘literature’ and ‘art’) on an equal basis to others.
- That the current review of EU and other data protection law now underway must examine in detail ways of ameliorating the labyrinthine and sometimes unreasonable restrictions which are imposed by current data protection law on personal data processing linked to the public dissemination of new knowledge. Only in this way can the substantial gap between law in the books and practice on the ground be addressed.