

# FORSKNINGSPODDEN #79

**Guest: Maud Bernisson**

**Interviewers: Nadja Neumann and Magnus Åberg**

[00:00]

[Intro music: Light jazz]

**Narrator:** You're listening to Karlstad University's podcast Forskningspodden. Here you'll meet researchers that take you on a journey to explore science. The podcast is brought to you by the university library.

**Nadja Neumann:** Hello and welcome to Forskningspodden. My name is Nadja.

**Magnus Åberg:** And I am Magnus.

**NN:** And today we're joined in the studio by Maud Bernisson. Welcome, Maud.

**Maud Bernisson:** Thank you.

**NN:** You are a doctor of media and communication studies here at Karlstad University, and today we want to talk with you about your doctoral thesis, which bears the intriguing title *The Public Interest in the Data Society: Deconstructing the Policy Network Imaginary of the GDPR*. So your thesis revolves around hot topics such as freedom of speech, personal integrity, and censorship. Could you tell us a little bit more about it, so that we get an entrance to what you have done?

**MB:** Yes, sure. Basically, the thesis is about how the right to privacy is defined or redefined by public interest in the law, because public interest is defined as a limitation of the right to privacy. So I was interested first in the public interest, and the GDPR is about personal data, which is basically how to handle data online of individuals. So that is when the society comes into the picture. So it's at the intersection of the right to privacy, public interest, and online tools, and how people are using these tools.

**MÅ:** So, as I understand it, the concept of public interest is really important in your thesis. Can you please try to define it?

**MB:** Yes, the public interest is first of all defined differently if you take a US perspective or an EU perspective, so I'm going to more embrace the EU perspective, as a European citizen. Basically, it seeks to give to every citizen the same access to rights and freedoms. And then of course, this is implemented differently according to different topics, and in this thesis I take a media perspective, which means that the concepts that are behind the public interest are more, for example, localism or diversity, and these are concepts that are barely considered online. This is more for public service broadcasting, for example, and so because this definition of the public interest is put aside, that's precisely why, actually, I wrote this thesis. Because to me it was very weird that this perspective is not applied online, and I think every

debate that is happening today shows how important it is to now embrace this perspective and to apply these concepts online.

**MA:** Why did you want to sort of research this particular area?

**MB:** Good question. First I was very interested in lobbying, and it happens that inference in research is very difficult to track, especially during the policy-making process, and even more so during the policy-making process in the European Union, because it involves so many actors. And tracking persons is almost impossible. So the idea was really how to study the inference or how to circumvent the study of the inference, specifically to be able to see how tech companies are impacting or have an effect on the GDPR. So, how do they come into the picture during the policy-making process of the GDPR, and what is the impact on the law and agents of the policy-making process.

**MA:** Can you tell us a bit more about the case? You use the GDPR—is it sort of a case study for you? Can you tell us more about that?

[04:36]

**MB:** The GDPR is basically one of the biggest laws in terms of actors involved. There have been so many proposals for amendments from lobbyists, and so, there were so many interests involved that it was obvious that I would have some data about the lobbying during the policy-making process. And it involves so many sectors that it was also interesting to see: Who does that concern exactly? What companies are concerned by the GDPR? And in the end it happens that it's not only tech companies, but so many companies from different sectors. However, there has been a hierarchisation of companies according to how much they knew about their tools and their platforms online, which permitted them, basically, to kind of draw or design the data society... Not exactly the data society, but how they are framing the uses of people or individuals when they are using tools online. So the GDPR is taking this, which is already predefined by these companies, and then it tries to regulate it. So it's kind of already framed by these technological actors. That's one of the findings.

**NN:** Could you give an example of these tools that you are talking about?

**MB:** Yes, sure. So there is for example Facebook. How does it define the users? Are they citizens, or are they users? Can both be complemented online, through the tools, or are they consumers? Those perspectives were conflicting as well. And when they have been defining either users, consumers, or citizens, or trying to define an individual through the three definitions—then what are the interests that will be protected, in the law? In the end, it's very clear that they are often considered as users. So, it's very problematic for freedom of expression and information for example, because individuals should basically be defined as citizens rather than users or consumers online, and in this case and the GDPR it's very clear: Freedom of expression and information is left to the member states, so it's not defined at the European Union level, and in the end, the member states have less weight to regulate those tech companies than the European Union.

**NN:** Can I just ask—because I'm not sure I understand everything you're saying—does the GDPR make a difference between which of these groups you belong to? Is that the problem? If you're a citizen, or if you're a user, or—you said another one that I already...

**MB:** Consumer.

**NN:** Consumer, right. So does the GDPR have a different impact on the three depending on what choice you make as a company, and how you identify them?

**MB:** Yes, basically, it's more how the regulators are going to embrace one of the definitions in the law. So if the individuals are already defined as users through the tools, then there will be some definitions of laws that are defining the tools from a technological perspective, so the tools will be mere technical... I mean for example they will not have biases, and that's extremely problematic, because it has been shown again and again that there are a lot of biases in algorithms. So if the tech companies do not consider these biases, it is problematic and it has an impact on the users. And of course, the GDPR is only considering the right to privacy, but it shows these limitations of the right to privacy... So, I'm going to take another example.

**NN:** Yeah, that's good.

[09:22]

**MB:** So, for example, on Twitter the platform decided to remove the tweets from Trump, because they were not considered legitimate enough to stay on the platform. So now the question is: who has the right to remove a tweet from a public forum? The GDPR is basically showing that the freedom of expression and information is left to the member state, and then it's the member states who will have to deal with that, but we know that they don't have kind of the power to do that, and it's much more efficient when it's at the EU level. And thus the tech company can actually define freedom of expression and information the way it wants on its public forum. So, does it consider a user a citizen in this case? Has the user elected Twitter? No. So, basically, it is not considered as a citizen, then, but is considered as something else—as a user who is to respect the terms of services or other guidelines that are defined by the platform, and by a platform that has not been elected.

**MÅ:** Are you saying that the company has had too much influence on the process of developing the GDPR?

**MB:** It has had an influence through these specific dynamics. Which means that, basically, they have been able to define online as a setup. For example, people are usually considered as users and consumers, but they are rarely considered as citizens. And the GDPR has been framing, for example, the definition of data processing or the definition of the tools of the platform, in a way that is actually just taking what is already happening. So there is a definition of data processing, and it is also taking into account the business model that is already set. And of course personal data is defined the legal way and permits people to have their individual rights strengthened, but if you actually define all the contexts in which personal data

is evolving, in a different way than defining the person as an individual—for example a consumer—then it tremendously weakens the right to privacy.

**MA:** Can you tell us a bit more about how you did your study? I mean, this is sort of the conclusion, what you came up with. But how did you find everything you just spoke about?

**MB:** So, more the methods, or...?

**MA:** Yeah, a little bit.

**MB:** Okay. So, again, I couldn't track inference, so I had to find another way to do that, and to do so, I've been targeting main actors. So I've looked at proposals from Facebook for example, or Google etc. But also the formal process: the European Commission, the proposal for regulation from the European Commission, and then the documents from the Council and the European Parliament, and then the GDPR. And I compared specific topics related to the public interest throughout the policy-making process, and I've tracked each time there were some specific changes, and I tried to see where these changes would come from. So for an example about public interest, the Council has been putting more and more restrictions to the right to privacy for security purposes. So this is extremely clear, actually, through the policy-making process and in the GDPR since public interest is already considering security as a strong limitation to the right to data protection. So this was one thing, but then I also needed to understand how the policy makers and the lobbyists were considering these specific topics in context. So, while I was targeting specific topics through the policy-making process I then needed to have their own definition. And I have interviewed 18 persons from different groups of actors; regulators, lobbyists; a collection of actors; but also NGOs, and they were explaining more thoroughly the context of each definition. So it permitted me to understand the whole process of thinking about different topics, and how it will change, and also what their understanding was of data society.

[15:01]

**MA:** The reason why I asked you is because I know that you have a very rich material, and you have studied different levels of the policy-making process. Are there any critical points in the policy-making process you think should be more highlighted?

**MB:** Yeah, I think the way the public interest is defined by the Council through security topics is really important to highlight, because there is a securitisation of the law, and that's extremely problematic, because we have talked a lot about how tech companies are kind of influential online—and security is also a hot topic—but I think it's also worth to see that the member states can have the power to regulate in some cases, and they have been able to basically frame the public interest in a way, for this topic, that is strong enough to be at the EU level under this cooperation between member states to protect security in a way. And it's defined in a way that's very broad, so it leaves a leeway of action which is very problematic, because it's too strong a restriction to the right to data protection, basically.

**NN:** In your thesis you have also looked at different maps with actors that invested in the GDPR, and looking at the map the complexity of this process becomes really clear. Who in this intricate mesh do you hope will read your thesis, or benefit most from it?

**MB:** I think it's also problematic in terms of ethics because I've been writing this not for lobbyists, obviously.

**NN, MA:** (Laughter)

**MB:** And maybe they will benefit from it, but I hope it will also benefit NGOs and regulators. But because I don't take a legal perspective, or a truly political science perspective, I think it might be very different from what has been done on the GDPR so far. So I hope it will benefit NGOs, mostly.

**NN:** Can you just summarise what would be most beneficial to the NGOs, with regard to your results?

**MB:** I guess it's all the entry points that tech companies and the lobbyists have to the policy-making process, but also the idea that there is a strong information asymmetry between the regulators and the tech companies. It means that there are some actors who will have information that they will not necessarily share with regulators, to be able to gain legitimacy during the policy-making process, and then they can actually give some information that they're framing a way or at a specific time when they know that it can be beneficial for them. That's a lobbying trick that is actually used by a collection of actors, and also lobbyists from tech companies. But I hope regulators can actually try to change the regulation about the policy-making process because to me this is a very unfair way of framing laws, when you actually involve only actors who have enough resources—and especially information resources—to be able to enter the policy-making process, to be listened to, and to be able to give information; for the regulators to be informed about something in society, and then to regulate this phenomena.

**MA:** I'm curious, can you give an example of how NGOs, in practice, have been left out now, and how they can be included more.

[19:45]

**MB:** Send in more money.

**All:** (Laughter)

**MB:** No, but, I don't think they have been completely left out, because there were some actors that actually listened to them, but I think that obviously they are not the ones who have the tools online. So it's very difficult when you are not working for these companies, to be able to actually gain more power during the policy-making process, because the tech companies are the ones who are directly regulated by the GDPR, and they are also the ones who have the more information about tools that seem to many people so complicated that we just cannot understand. And regulators have said it sometimes also: It's a lot of information to have and there is some that they couldn't get, so it's not NGOs that are going to give them this information—it is tech companies. So the question is how to force them to actually give the information that is needed for the regulators to do their job.

**NN:** I'm wondering, and maybe this is very far off from what you have done, but when you look at the NGOs many of the examples that you mention, like Google and Facebook, are American actors—is there a difference, with regard to the GDPR which is a European legislation... If they were, for example, European NGOs in contrast to American NGOs?

**MB:** I haven't interviewed so many NGOs, but I think yes, because the idea of free speech in the US is very different from the freedom of expression and information in the EU. Just this definition is already different, so I guess it will be implemented and understood differently by these actors. But also, just the difference within companies. It's very interesting to see that there was one person from one of the tech companies who was telling me—I'll use “they” instead of the subject—they were explaining that basically they had a team in Germany who did not want to implement free speech the same way, and the person told me: “So we had a conversation about that, but never had the possibility to change anything”. Basically, it was as they had decided before, and they implemented it in Germany as the HQ or global team was thinking about it, and that was it. So of course that's one experience from one person, one lobbyist, but I think it says something about global actors also, and where this definition comes from. And they are also then implemented globally—and of course there are laws as well—so they have to respect it to a certain... But between NGOs I haven't really...

**MA:** Do you think there is any take-home message in your thesis for us as laypersons, or the normal EU citizen? What can we learn?

**MB:** I think we can complicate the debate about lobbying and EU regulators, because I think what was very interesting is that the EU is often criticised for being such a big administrative... kind of a bureaucracy, but I have met regulators who were deeply convinced that they had to work for the citizens, and it was very interesting to see how they were opposing specific non-democratic ways of trying to impose things during the policy-making process. Of course not everyone is like this, but there are regulators who are really believing in what they are doing, and there are others who don't care and work for lobbyists. It's very important and I think that has been the work that I've been doing all the time, to avoid absolute generalisation. And there were also some lobbyists who were telling me that they had been working for the EU before, and when I was asking them: “But are you going to go back to the EU?”, they were all like: “Oh, that would be interesting actually”. So it's more complicated than it look like. We should really be careful with generalisation, all the time.

[24:57]

**NN:** Yeah, it's very complex...

**MB:** Yes, it is.

**NN:** There's so many different parts playing a role.

**MB:** And that's why, I think, we tend to generalise, because if we don't then we have to look at everything in detail and it becomes...

**NN:** Impossible.

**MB:** Exactly.

**MÅ:** Have you turned every stone in your study or are there research questions you could study further?

**MB:** Yes, I think there are some small details that I would like to expand. There is one, for example, about something called technology neutrality, and this is something that comes back over and over again during the GDPR. And what's interesting with this concept is that it encompasses ideas that technology is too fast to be regulated, and it will be fast for innovation to happen, and at the same time it's always too slow. So technology neutrality permits to define technology in such a broad way that it encompasses all types of technology. And this is kind of problematic to me because it will mean that any type of technology online is not the same but has too many similarities and is regulated the same way. But can we really regulate booking like Uber, or can we regulate Twitter? I mean, it's not the same problems that are ongoing. And I think it will be very interesting to see where that comes from. So, who has been putting it in the policy-making process, and developed it further? Is it coming from the legal field? Is it coming from a more technological way of thinking? I think that would be very interesting to look at.

**MÅ:** That's super interesting. And I wish we had more time, and maybe we can meet you again and talk about your upcoming research also, but our time is running up, so our final question is: You have successfully defended your doctoral thesis, congratulations—

**MB:** Thank you.

**MÅ:** What is your best advice to new doctoral students?

**MB:** Never give up.

**All:** (Laughter)

**MB:** No, I think it's... Always try to have as much feedback as you can, and really listen to it. I think that was one of the most helpful things that happened during my PhD, having feedback from very different perspectives.

**MÅ:** Those are good final words, I think. Thank you very much, Maud, for guesting Forskningspodden today.

**MB:** Thank you.

**MÅ:** And good luck with your upcoming work.

**MB:** Thank you.

**MÅ:** And to our listeners, warm thanks for staying tuned, we'll welcome you back next time.

*[Closing music: Light jazz]*

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