

出國報告（出國類別：國際會議）

「出席 APATA 舉辦之第三屆網路犯罪
年會並發表論文」出國報告

服務機關：國立中正大學

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派赴國家：澳門

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摘要

本報告在於說明國立中正大學法律學系副教授王正嘉，受公費補助前往澳門參加由亞太科技與社會學會（A P A T A）主辦的第三屆網路犯罪年會之目的，參加會議的過程，以及從會議中所獲得的心得與建議等事項，並附有若干照片佐證成果。該會議的主題乃是針對網路犯罪中的身分犯罪與個人資料濫用犯罪，由來自亞太地區臺灣、香港、澳門、印尼、澳洲、紐西蘭與加拿大的專家學者，從 6 月 21 日開始到 23 日針對這個主題，進行三天的研討與報告。

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一 目的

亞太科技與社會學會（Asia Pacific Association of Technology and Society；APATAS）乃由澳洲犯罪學學會首席犯罪學者 Russell G. Smith 發起並擔任會長，主要成立宗旨乃在於促進亞太地區現代科技與社會發展的改變本質；促進現代社會與社會中有效理解新科技知識；同時促使全球或地區脈絡下的研究網絡與理解。報告人本次前往參加該學會年會，並在同時舉辦的網路犯罪年會中發表論文。

二 過程

(一) 104 年 6 月 20 日從高雄搭乘長榮航空前往澳門。

(二) 6 月 21 日上午辦理登記與註冊，並由學會主席 Laurie Lau 博士發表第一篇論文，是有關於在網際網路犯罪中，末端使用者是屬於最弱勢一環的論文，文中特別提到個人端末使用者：可能因過分依賴其他人（特別是組織）的安全需求。特別是在亞洲，為節省成本或過分由政府照顧，以致忽視自己權益。

(三) 下午則由學會會長 Dr. Russell G. Smith 作 keynote 演講，特別闡述了目前在英美法系國家的新興網路犯罪類型：

身分與個資濫用犯罪（identity crime and misuse of Personal information），由於這個概念乃是我國較陌生領域，但與我國的詐欺概念非常相近，而在國外已經獨立成為一個犯罪範疇來進行探討，而且也屬於網路犯罪與經濟犯罪一環來處理，演講後進行廣泛討論。

(四) 6 月 22 日上午由澳洲國立大學(ANU)有名的學者 Prof Peter Grabosky 演講說明近十年來網路犯罪演進過程，不僅在數量上，同時也在質上面有著高度成長。第二場演講則由澳洲檢察總長助理秘書 Andrew Rice 主講身分犯罪的演進問題，其強調身分犯罪並非一個舊議題，事實上在聖經中即出現過冒用身分的問題，而進入到現



代這個問題更及，因為同時涉及到嚴重與有組織犯罪，同時也不斷跟恐怖主義相連接。

(五) 6月22日上午除了演講外，也進行有關隱私的網路犯罪議程，分別由南澳大學法學院 Rick Sarre 演講澳洲 metadata 二年之新法律，即要求所有網路資料必須保存二年以供後續檢查的新規定，並說明其中涉及到隱私權侵害問題；另一位發表人則是印尼 ATMA JAYA 大學法律系主任 Wibowo 教授主講在印尼的少年法中，有關少年犯罪記錄保存的問題，特別注重在於跟聯合國兒童公約的相符性。

(六) 6月22日下午進行了一個特別議程，是由四位來自香港職業是學生與警察的團體 VXRL 來示範網路與駭客攻擊，同時介紹各種網路駭客類型，令人大開眼界。

(七) 6月23日上午先進行一個焦點座談由 Prof Peter Grabosky 擔任主持人，討論網路中的身分犯罪問題、解答與未來的問題，另外則有三個由實務專家 keynote 演講，第一個是澳洲與紐西蘭的 iDare(ID care) 公司執行長 Patrick Glancy 主講，

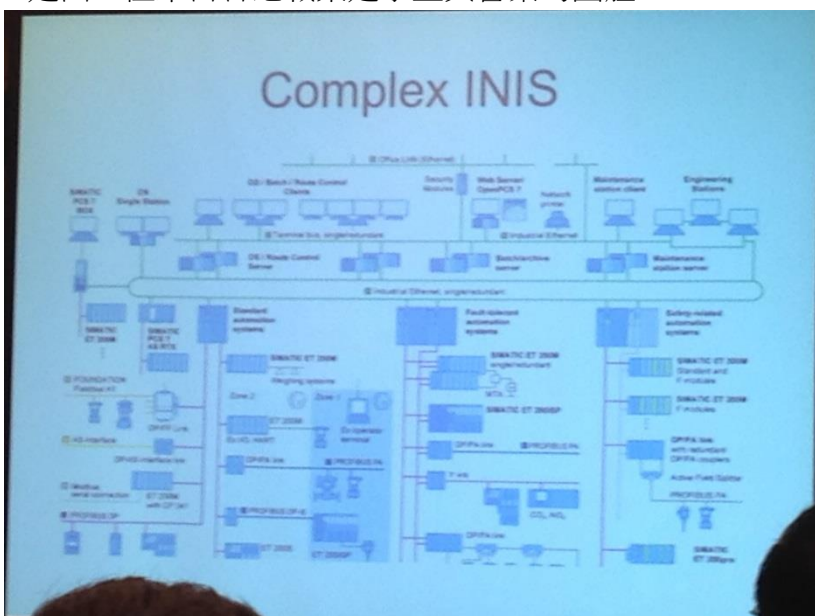
該公司是一個半官方的慈善非營利組織，主要任務是在提供國人身分支持服務，任何人如果認為其身分或個人資料遭受風險時，都可以前來求助，該組織的網站

為：<http://www.idcare.org/>；另一個專家演講則

是由紐西蘭移民局生物辨識中心主任 Arron Baker 主講，主要介紹紐西蘭所建置的生物辨識資料庫 IDME 與 RealMe 以及五國資料共享經驗，透過安全、信任與隱私原則，該資料庫可作為一個好的個人資料交換平台。私下與 Arron Baker 先生聊天，才知道他過去曾經派駐



臺灣三年，非常喜歡臺灣人事物。第三場 keynote 演講則是由澳洲犯罪委員會（Australian Crime Commission）的網路犯罪資深策略分析師 Charlotte Wood 小姐主



講，說明澳洲犯罪委員會的工作，以及有關嚴重且有組織犯罪中，跟身分犯罪與網路犯罪的關聯問題。

(八) 下午的最後一個議程則是有關網路犯罪法律的問題，分別有四位報告人，一位是加拿大 Simon Fraser University 的 Richard Frank 有關利用網路定位系統來找尋網路剝削兒童資訊 (Child exploitation material) 發信地的技術，是一種結合犯罪學與電子技術的整合系統。第二位報告人則是臺灣臺北科技大學智慧財產研究所的江雅綺教授有關網路中立性與數位盜版間的爭議問題，以及報告人有關臺灣保護個人資料與隱私刑法規定的介紹，第四位則是澳洲莫納許大學(Monash university)張耀中教授就網際網路監察的文章。

(九) 104 年 6 月 23 日晚間，從澳門搭乘渡輪前往香港繼續參加亞洲犯罪學會。

三 心得及建議

(一) 有關身分犯罪(identity crime)議題，在國內尚未聽到類似的討論，而從本次的研討會了解到這個綜合了個人資料與財產權，乃至於隱私權保障的議題，在國外已經發展成一個獨立的犯罪範疇來做進行研究，甚至網際網路的發展下，更是屬於網路犯罪的重要次領域，這一點可以作為未來研究的借鏡。

(二) 本次接觸到不少澳洲的學者，在澳洲除了學術機關外，對於整體犯罪的研究有不少個組織，例如國家犯罪學研究所(Institute of criminology)、澳洲犯罪委員會 (Australian Crime Commission)，不定時會提出各種研究報告與白皮書，這一點也可供我國參考。

(三) 有關個資與隱私保護，澳洲與紐西蘭的 iDare(ID care)公司頗值玩味，採取的是半官方的慈善非營利組織，主要任務是在提供國人身分支持服務，當任何人認為其身分或個人資料遭受風險時，都可以打電話求助，尋求解決，未來可作為我國建制的參考模式。

四 附錄

1. 報告人報告摘要:

A survey on protection of personal information and privacy by criminal law at the age of IT in Taiwan

Accompanying the development of Information technology, some amendments of criminal law are done responding to the growing problems about infringement of personal information and privacy. In Taiwan, the most significant one is nothing but a special law. And it can be observed in three stages.

In 1995 a new law was enacted and called "Computing Personal Information Protection Act." Basically, it followed the OECD guidelines on the protection of privacy and transborder flows of personal data. And then, an entirely amended act was made in 2010. It was "Personal Information Protection Act." There have been two significant changes in this amendment. One is to enlarge of the protecting objection to not only computing but all kind of personal information. The other is to expand the mode of offences from just leakage to acquisition, proceeding, use and transference.

Recently, the technology of datafication was developing and it entered the age of big data. A new trend of change was motivated. The traditional principle of anonymity was not regarded as enough measure to protect privacy fully. It became an agenda not only in academia but also in officials of Minister of Justice who are in charge of criminal policy on protection of personal data in Taiwan.

In this article, before launching a research on the application of big data on crimes analysis, the author will try to overview the existing legal structure and explore a possible approach both to research of big data and protection of privacy.

2. 報告人報告的 PPT

A survey on protection of personal information and privacy by criminal law at the age of IT in Taiwan

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National Chung Chen University, Taiwan
Wang, Jiang Jia(Alex)

content

- 1.Prologue;
- 2. Literature review
- 3. Criminal norms about personal information and privacy in Taiwan
- 4. Personal information At the age of big data

1.Prologue

- the IT age and criminal law
- invention of computer brings the revolution of "third wave"
- internet and the virtual reality technology have impact on interaction and relationship of human beings-virtual society
- New type of cybercrime violating personal information and privacy has developing in this world of Information and datafication

2. Literature review

- 2.1 Author's former attempts
 - 2010 A proposal program about fiber on internet approved by Ministry of Science and Technology Taiwan R.O.C.
 - 2011 Tanet conference: the crime of infringement of reputation and free speech
 - 2011 15th Law and technology Symposium, NCTU: the application and limitation of criminal reputation infringement on internet and virtual world.
 - 2012 National ChengChi Law Review No.128 pp.143-202: A study of the Application and limits of defamation on cyberspace: From the view of a virtual Reality Society

2.3 the personal information and privacy in a society of information(or a society which full of information)

- 1.the influence of cyberspace
- 2. "Message is medium" (M. McLuhan) to "We are the media"
- 3. the absolute free(A Declaration of the Independence of Cyberspace)
- How criminal law can function in it?

2.2.2 digital virtual community

- Lawrence Lessig:
- Four controlling powers in internet cyberspace:
 - 1.Program Code
 - 2.market
 - 3. Norm(inside cyberspace)
 - 4. Sanction(outside cyberspace)

2.2 Typology of virtual world and reality world

2.2.1 virtual community and digital person

- Danial J. Solove
- A. (the digital person) (2004): digital dossiers of person information
- B. (Understanding Privacy) (2008): new type of privacy infringement: collection, process and use
- C. (The future of Reputation: Gossip, rumor and Privacy on the internet) (2007, Chinese Edition,2011) more protection on internet?

3. Criminal norms about personal information and privacy in Taiwan

- 3.1 Three revisions of criminal codes about protection of privacy
- 3.1.1 Art. 318-1 the protection of digital secrets(1997)
- 3.1.2 Art. 315-1 & 315-2:the protection of privacy(action, talk and so on) (1999)
- 3.1.3 the chapter of cybercrime(2003)

- 3.2 Computing Personal Information Protection Act(1995)
- 3.2.1 OECD guideline (1980)
- Collection Limitation
- Data Quality
- Purpose Specification
- Use Limitation
- Security Safeguards
- Openness
- Individual Participation
- Accountability

- 3.2.2 the problem of CPIP(1995):
- objects / only computing personal information
- Subjects/ only Government and eight private institutions or enterprise.
- offences/ only leakage and illegal use
- 3.3 Personal Information Protection Act.(2010; valid in 2012)
- mode of offence : from leaking to collection, proceeding and use.
- protecting object: extending to almost all personal information and privacy

4. Personal information At the age of big data

- 4.1 New development
- 1980 OECD guideline to 2013 Guideline:risk management and globalization
- The importance of privacy
- The managing process of privacy protection
- The obligation of security risk notice

- Anonymise data, then it will not regarded as personal data.
- "it follows that information or a combination of information, that does not relate to and identify an individual, is not personal data. Clearly, effective anonymisation depends on a sound understanding of what constitutes personal data." (P.10)

- Information commission's Office : Big data and data protection(2014)
- 40. If personal data is fully anonymised, it is no longer personal data. In this context, anonymised means that it is not possible to identify an individual from the data itself or from that data in combination with other data, taking account of all the means that are reasonably likely to be used to identify them.

- 4.2 technology of big data
- 4.2.1 significances of big data:
- 4V :
- Volume / Velocity
- Variety / Veracity
- The datafication of our whole world
- Theresa M. Payton and Theodore Claypoole, *Privacy in the Age of Big Data*, P.11(Rowman & Littlefield:2014)

- 4.2.2. problem—solving
- The intersection of privacy, Law and Technology
- Two ways: identification and consent
- 4.2.2.1 de-identification or Anonymisation
- UK: Information commission's Office : "Anonymisation: Managing Data Protection Risk code of practice" (2012)

- But
- The risk of re-link and re-identification?
 - S. Barocas and H. Nissenbaum, Big data's end run around anonymity and consent, in: Lane, Julia, et al(eds), Privacy, Big Data, and the Public Good, P.44(Cambridge University Press:2014)


- Notice and consent :
 - "As a useful policy tool, notice and consent is defeated by exactly the positive benefits that big data enables: new, non-obvious, unexpectedly powerful uses of data. It is simply too complicated for the individual to make fine-grained choices for every new situation or app."
 - US President's Council of Advisors on Science & Technology, Big Data and Privacy: A Technological Perspective (2014) P.38

- Taiwan's case:
 - PIPA (Personal Information Protection Act)
 - Art. 9 Sec.1 Item 4:
 - In case it is about public interests on statistics or the purpose of academic research, it is no need to notice.
 - But:
 - 1. commercial use?
 - 2. How to notice and consent?

- An Example Case
 - Latest Taiwan Business review(商業週刊) vol. 1438; 2015 June
 - Cover story: Why QQ.com can held a free concert and make money?
 - The answer is data.
 - "羊毛出在羊身上，但豬會付錢。"
 - Wool is from the sheep, but Pigs will pay it."


The infographic illustrates the business model of Tencent. It starts with '騰訊' (Tencent) at the top, leading to '用戶' (Users). From users, the flow goes to '數據' (Data), which then branches into '廣告' (Advertising) and '其他服務' (Other services). The central part of the infographic features a large '數據' (Data) label, with arrows pointing to '廣告' (Advertising) and '其他服務' (Other services). The bottom part of the infographic shows a large '錢' (Money) label, with arrows pointing to '廣告' (Advertising) and '其他服務' (Other services).

- 4.2.3 From IT(information technology) to DT(Data Technology)
- current→ big data
- 1. The focus of norm:
 - Collection→ use
 - automatically collecting and consent by free service
- 2. the principle of use and the norm
 - How to establish? It is a future theme.




conclusion

- ◊ At least three challenges to Taiwan's Personal information protection :
- ◊ 1. Now Mainly use "notice and consent" to protect
- ◊ But in age of big data? → stop big data from its positive benefit.
- ◊ 2. Now mainly focus on stage of collection
- ◊ But how about the stage of use? → how to use and can use out of purpose of collection are the problems



- ◊ 3. formerly more protection for sensitive personal information
- ◊ but in age of big data → It is difficult to define the line between sensitive data and non-sensitive data.
- ◊ EX. From the times of buying condom to find sexual life
- ◊ Anyway,
- ◊ it should be Balance of privacy, Law and Technology



Thanks for your attention

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