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Biometrics and Privacy Protection International Dialog

第一年

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1. 前言

隨著生物科技的發展及辨識技術進步，利用現代科技如紅外線遙測、指紋、虹膜等辨識技術，快速取得生物特徵等個人資訊，已逐漸廣泛應用於人類生活中。至於如何有效利用科學技術，並兼顧個人隱私權之維護，已成為國際間新興議題。本計畫試圖透過跨領域的對話與研究，在科技與隱私之間找到最佳平衡點。

新興科技所衍生的個人隱私保障課題，在國際間發展出多元之研究脈絡。歐洲與美國衍生出不一樣的價值取向與保護方式。而歐盟相關研究的發展，更帶動整體規制思想與法律制度上，重視軟性法律 (soft law) 的趨勢。本計畫預期從台灣與亞洲地區對於歐盟個人資料保護上的理念認同情形，以及對於歐盟重視治理的規制方式此一發展趨勢的理解與認同程度，作為研究主軸。藉此瞭解從規制面與資料保護之實體課題兩方，歐盟所發展出的特殊文化取向與規制方式，在台灣以及亞洲主要國家被接受的程度與產生的獨特議題。此舉不僅可以使各國研究團隊，能進一步掌握未來規制發展的可能趨勢，也在比較研究過程中，更清楚歐盟相關議題的發展以及台灣等亞洲國家未來得以投入研究的重要方向。

本計畫屬於歐盟第七架構計畫 (FP7) 之RISE (Rising pan-european and international awareness of biometrics and security ethics) 子計畫。由台灣政治大學法律系特聘教授 陳起行博士帶領相關研究團隊與義大利CSSC中心 (Center for Science, Society and Citizenship) Emilio Mordini教授所帶領之跨國研究團隊共同合作。並已於2010年10月在台北籌辦國際研討會，並於會中與世界各國專家交流意見，試圖尋求最佳解決方案的可行性。本精簡報告總結近一年來，本計畫之執行情形，計畫產出，以及進一步之規劃等議題。

本報告並的最後一節，計畫成果自評中，進一步對於本計畫前一年計畫審查人所提出的三個疑點，一一釐清，以利本計畫第二年之審查作業之進行。

2. 研究目的

Biometrics 生物辨識技術近年來發展快速。在防恐，出入境管制，公共衛生，

門禁管制，等多方面多所應用。本計畫的目的，一方面藉由在世界各地辦研討活動，將相關領域的專家學者聚集，形成全球的研究者網絡；二方面，也積極探索運用生物辨識系統過程中，能同時保護個人隱私，尊嚴的最佳實踐方案。報告人加入RISE，主要因為生物辨識涉及的隱私權保護課題，一直是廣為研究而尚未獲得較好的成果的領域，近幾年，報告人由治理（governance）的理念切入，強調由下而上，重視對話的最佳實踐方案，欲透過RISE，能找機會進一步發展相關理論及制度。就此而言，目前這兩項目地均有很好的進展。

3. 文獻探討

生物辨識在技術面，仍然是一個快速發展的領域，如Advanced Methods for Face-based Biometrics, Tistarelli, Massimo et al., Dec. 2010, Morgan & Claypool Publishers其運用的可能，也在快速地被發掘；如Biometric Recognition: Challenges and Opportunities, Whither Biometrics Committee et al., National Academies Press, Nov 2010; America Identified: Biometric Technology and Society, Nelson, Lisa S., MIT Press, Dec 2010。此領域最近待出版的書，就有近數十本之多。

2010年十月受邀來台灣RISE計畫台灣研討會的北京中國科學院生物辨識及安全研究中心主任，便負責發展2008年北京奧運，用facial recognition技術辨識恐怖份子的系統。可見此一科技進展迅速，運用也十分快，在社會各角落都可能有的機會。

個人隱私也因此又一次暴露在幾乎可以無所不在的追蹤及辨識科技中。而隱私的概念以及隱私權的內含與保護標準一直沒能夠清楚地釐清，使得問題更行複雜。針對隱私及其權利的研究，不斷出現，便反映了此一現象。例如最近出版的Helen Nissenbaum, Privacy in Context: Technology, Policy and the Integrity of Social Life, Stanford U. Press, 2010，而最近待出版的相關著作，則更是可以百計。

本計畫主持人義大利的Emilio Mordini教授，目前也受到Oxford University Press的邀請，編輯一本The Foundation of Privacy 的書，並邀請報告人負責編輯該書有關法律方面的著作（詳下述），可謂本計畫研討過程的累積，以及最新的發現，與學術界做最快速的分享。報告人亦將以治理為題，建議法律界改變隱私保障上的思考。

4. 研究方法

過去五年，在法律理論方面，申請人持續著眼於由社會觀點出發，對於自由主義或是德握金的權利理論，詮釋理論，及其裁判理論的批判。這些批判，主要有哈伯瑪斯主張生活世界及其受到系統世界殖民，進而提出論述理論，改善法律

事實性與規範性的連結以及公自主與私自主的互生 (co-originality)。

就過於強調法律內部觀點的法實證主義以及德握金的法律理論，如何改善而言，過去數年，申請人主要探索來自圖布聶 (Teubner) 自發性法律理論，以及 Jean Cohen 企圖在自發性法律理論的基礎上，強化哈伯瑪斯論述理論以及法律原則的主張，以強化該法律理論的努力；也對於富勒 (Fuller) 人際交往的法律理論，及其是否能與德握金權利理論，共構出國家法律與社會人際交往所形成的社會規範所共構，不獨厚國家法制，或社會規範的法。

就制度面而言，申請人認為德握金的法律原則若不僅提供實質內涵，也在需要社會進一步互動，形成社會規範以充實法律原則內涵時，國家法律能透過法律原則，提出方向與指導，啟動社會法律中介 (legal intermediaries) 力量，帶動良性互動，在發展最佳實踐模式的過程中，藉由法律互生的強化，也充實法律原則內涵，則國家法律與社會規範之形塑，確實發展出互生的關係，將是未來法律發展上，符合社會發展趨勢的基本理念。

至於治理網站的建構，近年來，申請人也就法律理論上所得到的啟發，作為申請人運用資訊科技在法治未來進一步建設上的指導理念。尤其以公共領域 (public sphere)，互生性 (co-originality)，自發性法律 (Reflexive law)，以及近年來試圖改善自發性法律，如 Jean Cohen, Susan Sturm 等法學家的努力作為基礎，設計治理網站 (governance web)，進一步透過資訊科技，尋找落實治理制度最佳模式。

參與 RISE 計畫，無論在理論，制度，乃至於治理網站的研究與推廣，都有很好的平台，能與各領域的，各國的專家學者對話，有了很好的開始。明年在北京所規劃的研討會，將有更進一步的發揮 (詳下述)。

5. 結果與討論

今年度執行本計畫之結果，除了與各國各領域專業及學者的互動之外，最具體的成果，當屬十月分在台灣召開的 FP7 RISE Taiwan Conference。該研討會議程 (如附件一)，以及整個活動內容及圖片等，可以上該活動網站：<http://fp7rise.cs.nccu.edu.tw/ac/?q=user> 取得。只有每位參與者的報告簡報檔案，由於著作權上考量，必須註冊後，登入該網站，才能取得。這個網站，與 RISE 計畫在世界各地所舉行研討的網站，連結起來，是一個生物辨識及隱私保護方面，十分及時而具全球性的研究資源與研究人才網絡 (RISE 所舉辦各地研討活動請見附件二)。

RISE 研究的是正在發生對人權十分重要的議題。最近新聞媒體對於美國機場安檢，有很多報導。RISE 計畫先前便在歐盟的要求下，完成了相關研究報告，並被歐洲議會接受，成為歐盟正式政策。RISE 計畫，針對機場運用生物辨識系統進行安檢之倫理，法律規範，所提出之研究報告 (封面如附件三，該報告全文可以由 RISE 計畫網站下載：

以台灣的RISE研討會為例，將台灣相關領域的學者，專家，業界集於一堂，與該計畫來自各國各領域的成員互動。印象深刻者，有台灣微軟的經理談雲端運算的安全問題；趨勢科技代表也表示該公司特別成立子公司，負責雲端的資訊安全業務。政府單位則有刑事鑑定單位的主管，也是台大權威李俊億教授，談生物辨識與刑事鑑定，台灣的進展。資訊科技方面，則有中研院資訊所副所長王大維研究員介紹該所在隱私技術上的思考及最新進展；政大資科系胡毓忠教授結合資訊與法律，討論歐洲與美國就個人資料越境談判上的雙方想法。詳細的與會者名單，請參考附件六。

法學方面，除了有國內最早研究生物辨識與隱私保障的王郁琦教授外，幾乎國內主要研究此一領域的學者，均發表了初步研究成果。結果一共有六位受邀請，參與RISE計畫主持人Emilio Mordini教授負責編輯之The Foundation of Privacy一書，貢獻一章。報告人在十一月中邀請這幾位學者，分享彼此研究心得後，十二月已經提出個人之論文大綱，由於東西隱私概念之比較是日益受到重視的課題，報告人也特別邀請美國資訊倫理方面的重要學者Charles Ess就此一課題撰文（如附件四）。目前規劃明年的北京研討會上，會將研究成果完整呈現，並予與會學者專家討論。

這些論著將與其他領域的章節集結成冊，由Oxford University Press出版。一方面，國內法學者獲得極正面的國際能見度；二方面，台灣的法律專業及學界團隊，是RISE計畫所形成的國際研究網絡中，最完整的團隊，日後在FP計畫以及所帶出的國際研究中，將扮演重要的一環，這是參與歐盟計畫才可能有的國際經驗，十分難能可貴，在此感謝貴處積極協助國內研究團對參與歐盟計畫。

6. 計畫成果自評

此節由審查人指出的三項問題為核心，就本計畫進行反省：

(一)此計畫最重要的是規劃舉辦兩場大型研討會，是否有必要分為兩次舉辦的必要，請審慎評估。

由附件二，RISE計畫在世界各地經由舉辦研討而集結相關專家學者形成研究網絡，已經收到初步效果。舉辦台灣及大陸的FP7 RISE Conference, 是加入該計畫之前雙方便已經達成之共識，因為RISE計畫自一開始，便是以在全球各地召開研討會議，以喚起各地區對此議題之重視，台灣也因此有機會藉此計畫進入國際研究團隊。參與之前，也先與貴會充分溝通，並獲得支持，否則報告人沒理由敢積極與計畫主持人達成協議。若加入之後，不履行承諾，則本計畫，政大以及台灣在歐盟的誠信，會被質疑。

目前該計畫預計於明年（2011）在歐盟總部進一步成立法人團體，日後以基金會的名義，繼續申請各項研究計畫，推動生物辨識及隱私保障的

研究與各地的重視程度。台灣團隊的合作基礎，是進一步參與國際研究團隊的準備。

明年將此一議題帶到北京，與大陸相關領域專家學者討論，提升大陸對於此一領域的重視，有其必要。北京協和醫學院生命倫理研究所將協辦此一活動，該院對於此一學術活動極為重視，特別希望能在秋季班開學後進行，使得相關領域的廣大學生社群也能參與。此舉因此有其意義。研討活動的內容也是在台灣研討的基礎上，進一步發展，也呼應報告人治理的研究旨趣（詳下述），是難得的研討及驗證機會。

經費方面，報告人因此懇請貴會變更原先經費之申請如下：

基於附件五的規劃，參考其擬邀請名單，第二年度國外專家至北京開會之預算，請由原先之 67 萬元增至 100 萬元；原先申請之國外差旅費，則由 71 萬元減至 30 萬元，就國外差旅部分，報告人仍希望貴會能補助本研究團隊參與 2011 年 5 月在華盛頓舉行之跨大西洋兩岸研討會，已掌握 Biometrics 與隱私保障的歐美談判與學理上最新的發展；以及 2011 年 11 月在布魯塞爾舉行之 RISE 國際研討會，計畫主持人已經告知，該會議上將正式成立一國際基金會，長期推動 Biometrics 相關倫理，隱私保障議題的研究與國際對話。參與該會議，台灣團隊能夠進一步成為該基金會的發起與核心成員。

(二)計畫書中未能具體提出第二次國際研討會的規劃，且第一年之國際研討會缺乏成果產出。

今年度本計畫的產出，計有：

1. 參與附件三所列機場安全與人權保障政策白皮書，提供定稿前的意見；
2. 第一年在台灣的研討會成果則都可以由該研討會網站下載（簡報檔需要先註冊登入網站後才可以看得見，由於檔案過大，為附於本報告後，報告人樂於另行提出）；
3. 有六位國內法學者將參與專書The Foundation of Privacy寫作，日後由Oxford University Press出版。報告人並獲邀，擔任該書編輯之一，負責法律篇章的編輯工作，使得報告人及所發展出的台灣法律團隊不但受到該計畫的重視，更成為該計畫中最完整的法律研究團隊。

有關第二年研討會的規劃，請見附件五：2011 RISE Beijing Conference 中文規劃。其中Personal Information Management (PIM) 是一項運用治理理念的隱私保護機制。透過各行各業認證機制，落實隱私保障，目前日本發展最早，韓國也開始運作。中國大陸僅有大連市，準備發展此一系統。台灣則目前由經濟部責成資訊工業策進會，負責發展台灣的PIM制度，初步以電子商務廠商開始。報告人已經向負責此業務的資策會代表介紹治理網站的想法，日後將提經濟部。

由於隱私權保障，涉及不確定之法律概念，一般大眾也不甚瞭解此一法益，因此透過非營利組織之帶動，落實隱私保障機制，或許是更有效，也日益需要的制度。報告人所發展的治理網站機制，在PIM系統中，也值得探索其利用價值。這部分，報告人已經與國內負責此一機制的資策會組長邱映曦女士深入交換過，明年將提經濟部，如獲經費支持，將運用在台灣PIM。

第二年北京的研討，有一個單元便是PIM制度的各國比較，標準的探討，以及與歐美相容（compatible）的研討。將透過RISE計畫，邀請歐洲專家與會，美國方面，將邀請報告人指導教授，設立柏克萊大學法學院科技與法律研究中心的Peter Menell教授，或該中心隱私權的法學教授參與，請貴處支持。

其他的場次，尚有前述幾篇隱私法律論文的分享與探討；另外一場次由中國科學院生物辨識與安全研究中心負責，討論該技術在商務上最新的研究，並由倫理，法律專業對話；還有一場是香港理工大學生物辨識研究中心負責，該中心是RISE計畫的成員之一，將探討生物辨識在中醫上的最新應用上的研究，也由倫理及法律專業負責檢討其倫理及隱私保障作法是否得宜。

懇請貴會補助該研討會所需要的機票，食宿，及研討場地等相關開支。

(三)請審慎評估「北京」是否為最佳舉辦第二年舉辦研討會之地點。

就與RISE議題相關領域人才的質與量而言，北京確實最好。協和醫學院是中國醫學研究的重要學府與研究基地。周邊相關教研單位，政府機關林立，可收最好的影響效果。當然，本計畫也不排除在其他城市召開會議的可能。尤其日後，需要普及到各地時。

報告人也希望研究成果能在台灣發表，畢竟國內的補助，能讓國內相關學者專家參與研討，有更好效果。但是這個計畫是已經進行一年後，台灣才加入，所以比較急。確定能加入後，到提出計畫的時間很短，第二年比較有研究成果，而去北京舉辦研討活動不似在台灣方便，需要更長時間準備，因此第二年選在北京舉辦。來日方長，期望台灣團隊能在RISE以及往後的國際研討中，越來越能成熟發展，有更多的團隊進入。



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Further question, please contact:

JONA CHIANG [MAILTO:jona525@gmail.com](mailto:jona525@gmail.com)

Program Schedule

21st October 2010, Thursday

13:00-14:30 Opening Session

13:00-13:30 Emilio Mordini

Founding Director, Centre for Science, Society and Citizenship, Rome

13:30-14:00 tbc

14:00-14:30 Chih-Jung Chou (周志榮)

Director, Dept. of Legal Affairs, Ministry of Justice, Taiwan

Recent Development in Taiwan's Personal Data Protection Laws

14:30-14:50 Refreshments

14:50-16:10 1ST Session: Privacy, Security and Liberty in the Asian I

Session Chair/Discussant: Yu-Chi Wang (王郁琦)

Associate Professor, School of Law, Dept. of Law, Shih-Hsin University, Taipei, Taiwan

14:50-15:10 Ching-Yi Liu (劉靜怡)

Associate Professor, Graduate Institute of National Development, National Taiwan University, Taipei, Taiwan

Privacy, Security, and Liberty: Converging or Diverging in Asia

15:10-15:30 Yu-Chung Hu (胡毓忠)

Professor, Dept. of Computer Science, National Chengchi University, Taipei, Taiwan

Privacy Preserving Data Sharing Policy for National Security Enforcement

15:30-15:50 Da-Wei Wang (王大為)

Research fellow and Deputy Director, Institute of Information Science, Academia Sinica, Taipei, Taiwan

How to Share Data While Preserving Personal Privacy

15:50-16:10 Discussion



- 16:10-17:30 2nd Session: Privacy, Security and Liberty in the Asian II**
Session Chair/Discussant: Nigel Cameron
President and CEO, Center for Policy on Emerging Technologies, USA
- 16:10-16:30 Wen-Tsung Chiu (邱文聰)**
Associate research fellow, Institutum Jurisprudentiae, Academia Sinica, Taipei, Taiwan
tbc
- 16:30-16:50 Ming-Li Wang (王明禮)**
Assistant Professor, Graduate Institute of Industrial Economics, National Central University, Taoyuan, Taiwan
Openness: An Alternative Approach to Cyber-security
- 16:50-17:10 Ying-Hsi Chiu (邱映曦)**
Senior Manager, Science and Technology Law Center, Institute for Information Industry III, Taipei, Taiwan
The Development of Personal Data Management in Asia
- 17:10-17:30 Discussion**
- 17:30-19:00 Welcome Session**
Hosted by Prof. Kai-Lin Fuang, Dean of College of Law, NCCU

22nd October 2010, Friday**09:00-10:40 3rd Session: Cyber-Security and the Internet**

Session Chair/Discussant: Ting-Chi Liu (劉定基)

Assistant Professor, College of Law, National Chengchi University, Taipei, Taiwan

09:00-09:20 Rahul Jain

Senior Consultant, Security Practices, Data Security Council of India (DSCI), India

Perspectives on Privacy in a Connected World

09:20-09:40 Vincent Shih (施立成)

Senior Attorney & Director, Microsoft Taiwan Corporation

Security of Cloud Computing

09:40-10:00 Mitchel Chang (張中明)

Senior Vice President of Global Technical Support, Trend Micro Taiwan

Emerging Security Challenges & Defense Strategy

10:00-10:20 Chung-Young Chang (張中勇)

Professor and Director, Graduate Institute of Industrial Economics,

Dept. of Public Affairs, Fo Guang University, Yilan, Taiwan

Cyber-security and national security: international practices

10:20-10:40 Discussion**10:40-11:10 Refreshments****11:10-12:30 4th Session: Global Mobility and Public Health**

Session Chair/Discussant: Chi-Shing Chen

Distinguished Professor, College of Law, National Chengchi University, Taipei, Taiwan

11:10-11:30 Xiao-Mei Xai (翟曉梅)

Professor and Director, Graduate Program on Life Science and Ethics, Beijing Union Medical College, Beijing, China

Governing of New Influenza in China

11:30-11:50 Chi-Shing Chen (陳起行)

Distinguished Professor, College of Law, National Chengchi University, Taipei, Taiwan

A Discursive Approach Toward New influenza governance



11:50-12:10 Ivory Yi-Hui Lin (林宜慧)

*Secretary General, Persons with HIV/AIDS Rights advocacy
Association of Taiwan*

Genuine Quarantine or Marked Discrimination?

12:10-12:30 Discussion

12:30-13:50 Lunch

13:50-15:10 5th Session: Biometrics and Identification Technologies I

Session Chair/Discussant: Ajay Kumar

*Assistant Professor, Dept. of Computing, The Hong Kong
Polytechnic University, Hong Kong, China*

13:50-14:10 Stan-Z. Li (李子青)

*Professor, Institute of Automation, Chinese Academy of Sciences,
Beijing, China*

Recent Advances in Face Biometrics and Security Surveillance

14:10-14:30 Der-Ming Liou (劉德明)

*Associate Professor, Institute of Bioinformatics, National YangMing
University, Taipei, Taiwan*

The Development of Telecare Service in Taiwan

14:30-14:50 Huei-Ying, Lucille, Hsu (許慧瑩)

*Legal researchers, Science and Technology Law Center, Institute for
Information Industry III, Taipei, Taiwan*

Cyber Security and the Real Name System in Asia

14:50-15:10 Discussion

15:10-15:40 Refreshments

15:40-16:40 6th Session: Biometrics and Identification Technologies II

Session Chair/Discussant: Chung-Min Tuan (段重民)

Dean, College of Law, Shih-Hsin University, Taipei, Taiwan

15:40-16:00 James Chun-I Lee (李俊億)

*Professor, College of Medicine, Dept. of Forensic Medicine,
National Taiwan University, Taipei, Taiwan*

Forensic DNA Profiling in Taiwan



16:00-16:20 Ting-Chi Liu (劉定基)

*Assistant Professor, College of Law, National Chengchi University,
Taipei, Taiwan*

Privacy Concerns in Forensic DNA Databases

16:20-16:40 Discussion

16:40-17:10 Conclusion Session

Emilio Mordini

*Founding Director, Centre for Science, Society and Citizenship,
Rome*

Chi-Shing Chen

*Distinguished Professor, College of Law, National Chengchi
University, Taipei, Taiwan*

17:10-19:00 Farewell Session

Hosted by Prof. Ming-Cheng Kuo, Dir. Institute of Law and
Inter-discipline; Vice Dean, College of Law, NCCU

附件二：自從 2009 年三月一日，RISE 計畫開始運作後，截至報告人撰寫本報告時，該計畫先後在下列各地，進行了研討活動：

Mar 12 - 13, 2009 Rome Kick off Meeting

Sep 24 - 25, 2009 Delhi Meeting on Privacy and Data Protection in India

Nov 5 - 6, 2009 Brussels Workshop of Individual Identification

Jan 4 - 5, 2010 Hong Kong 3rd International Conference of Ethics and Policy of Biometrics

Mar 25 - 26, 2010 Brussels Workshop on Global Mobility

Sep 23 - 24, 2010 Brussels Workshop on Cyber Security

Oct. 21st - 22nd, Taipei, FP7 RISE Taiwan Conference

Dec 9 - 10, 2010 Brussels Stakeholder Conference

未來該計畫仍規劃進行下列研討：

May 5 - 6, 2011 Washington DC Meeting on Transatlantic Data Sharing

Oct. 20th - 21st, Beijing, FP7 RISE Beijing Conference

Dec 1 - 2, 2011 Brussels 4th International Conference of Ethics and Policy of Biometrics

Feb, 2012 Rome Conclusion of the project and launching of an international dialogue initiative



POLICY Report

Whole Body Imaging at airport checkpoints: the ethical and policy context



CENTRE FOR SCIENCE, SOCIETY AND
CITIZENSHIP

HIDE & RISE Projects

POLICY Report

Privacy and the New Legal Paradigm

Chi-shing Chen*

Privacy is indeed controversial, one question that is still waiting for further clarification is whether it is universal, or simply cultural, i.e. existing only in the western society where rationality and human dignity is supreme. The protection of privacy right adds even more complication, actually a new legal paradigm is called for to successfully address its problem. This article explores the idea that in the internet age, where the network model dominates the human relationship, the idea of law as the successful cooperation between public and private ordering is needed, both in the west and the east.

The “Great Learning” is considered the first lesson of virtue to be mastered in the Confucian school. In chapter 6, the idea of ‘shen du’ is brought up, where a ‘superior man must be watchful over himself when he is alone.’ Here, we think what is indicated is an idea similar to Kantian autonomy, in the sense that when someone is alone and has no need to response to outside world, how he or she behaves himself or herself is a critical indicator of the virtue of this man or woman, that’s why a superior man will take even greater care to handle himself when he is alone. Though this is not a decisive proof of the existence of Chinese idea of privacy, it raises good clue to demonstrate the difference between eastern and western idea of privacy is mere conceptional, where the concept of privacy do exist in both culture.

Actually, a difference on the level of conception can also easily be delineated for the western idea of privacy. The German constitutional court established a constitutional right of information self-determination in a 1983 case; while in the USA, a much weaker right to privacy, as the penumbra of the right to liberty, was first pronounced in a 1966 decision of the supreme court of the USA. From then on, a strong and substantive constitutional right to information privacy was developed in Germany; while a relatively weaker and more procedural oriented constitutional right to information privacy dominated the US protection

However, the emerging pervasiveness of the challenges to the information privacy, either in the east or west; Germany or USA, indicates that no matter where we are, we all need a new paradigm of protection scheme, both in theory and in practice. More and more theoretical as well as institutional development are placing their emphasis on construction of the legal principle roots in fully reflected context.

Jean Cohen, in her new legal paradigm, borrows the idea of co-originality of Habermas, and emphasizes mutual empowering and mutual effecting relationship between the state-made law and social self-regulatory effort. Sturm further points out that neutrality as the basis of impartiality covers only part of the landscape in law making; social norm derivation based on the principle of multi-partiality representing the needed complementary portion to complete the law making cycle. Privacy protection, under these new paradigms, effectively requiring us to be fully reflective toward the rich context of each privacy expectation; while aiming at the reach of principled responses

toward each and every privacy expectation.

Taking a closer look, we can find out that the new legal paradigm rejects a unitary point of view of the law. Law represents not simply as an impartial public institution; or only as the result of private social ordering. Actually, the public as well as the private sides of the law are internally mutually related and mutually enhancing. In the internet age where network relationship dominates, privacy protection is certainly not the only issue that needs the new legal paradigm.

ID Cards and Biometric Technologies as Surveillance:

Privacy Values in Asia

*Ching-Yi Liu***

** Associate Professor of Law, Graduate Institute of National Development, National Taiwan University; J.S.D.'97, The University of Chicago Law School, LL.M.'94, Harvard Law School.

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This paper will explore the phenomenon of the global growth of national ID initiatives and its influence upon the shaping of privacy values in Asian countries. As the distinction between internal and external security is breaking down, threats, real and imagined ones, are viewed as both global and national and Individuals are increasingly asked to take “responsibility” of preparedness and precaution in forming a “safety net.” Under this context, many countries around the world, especially Asian countries, plan to create new national ID card systems either to replace existing non-electronic cards or to introduce a digital ID system. All IDs involve surveillance that gives rise to privacy and security concerns. Furthermore, the “War on Terror” after the September 11 attacks pushed national security into a prime position and a quest for new surveillance technologies.

Second, as new National IDs increasingly incorporate the use of biometric technology devices, biometric information, which include fingerprints, DNA samples, iris scans, and hand contour, are collected for identification and verification purposes. There even exist the potential inclusions of other types of personal information in national ID systems. Consequently, this paper believes that it is worthwhile to analyze to what extent and in what ways do new IDs contribute to the quest of security and to what extent do we have to compromise our privacy.

Third, since the widespread of biometric technologies and their associative use with IDs systems will inevitably result in significant impact on data privacy protection, it is necessary to examine how Asian countries shall tackle with the following issues: (A) improper collection and processing of biometric information leading to negative consequences such as data mining, data profiling, and risk identity theft, etc.; (B) the concern that the information collected might be collated with other databases leading to (secondary) uses which are beyond the reasonable expectation of the data subjects ; and (C) the use of biometric information giving rise to fear of constant surveillance.

In other words, this Paper will explore the Big-Brother rationales supported by most Asian governments who embrace National ID schemes and their associated use of smart-electronic-biometric technologies with enthusiasm, and demonstrate why it is a mistake to adopt this approach. It will show that most national ID schemes are technically sophisticated systems designed to be beyond the comprehension of the public. There are usually no defined limitations on the expansion of the national ID systems in Asia countries currently and some of the national ID systems are multifunctional , covering both public and private uses from the start, which makes the privacy issues more complicated. This paper will also explain why it is quite common that the risk and danger concerns arising from the national ID systems are always under-estimated by Asian governments. By so doing, this paper will try to answer whether Asian cultural values such as “confidence and trust in government” shaping Asian governments’ attitude toward privacy protection, and if so, what is the solution for this privacy dilemma. This paper will conclude with the observation that most National ID schemes contribute to a culture of control, which is negative for a sound and

sustainable democracy. Also, it seems fair to say that most Asian governments over-estimate their capacities in handling the potential risk associated with IT. As most Asian countries do not have in place an adequate regulatory scheme and proper enforcement mechanism for the protection of data privacy, more social discourses before the adoption of ID cards associated with biometric technologies are in urgent need.

Personal Information as a Currency and a Commodity

--Privacy on a Commercialized Net

Ming-Li Wang¹

¹ J.S.D., Stanford Law School. Assistant Professor of Law, Graduate Institute of Industrial Economics, National Central University, Taiwan;mlwang@ncu.edu.tw.

² Ming-Li Wang, Constitutional Privacy Discourse in a Network Society, NTU L. Rev., Mar. 2010, at 127.

In a previous article,² I criticized both the European legal regime of privacy protection and its American counterpart for trying to solve new problems with dated tools, rendering both ineffective on the information superhighway. The former was overly rigid as a result while the latter was plainly inadequate. At the heart of their failure, I went on to contend, lay their inability to appreciate the changes brought upon us by some thirty years' worth of technological breakthrough or, put simply, the differences between modern cyberspace and the old realspace.

This paper intends to further elaborate on a key difference: the unmistakable and unavoidable trend of commercialization in all matters personal, personal information in particular. In less than two decades since the NSF opened up the internet to commerce, advertising has permeated the web and established itself as the predominant form of financing for ever proliferating forms of information-centered services, old and new alike. Aided by seemingly unlimited computing power, storage capacity and communications bandwidth, which just keep on progressing at breakneck speed, the sophistication of modern data mining and information processing techniques has reached a point that no data is valueless as long as commercial exploitation is concerned. New businesses and new markets have sprung up to take advantage of these novel technologies. Many are still on their way. Social norms have changed, too. Fading away is the generation of faceless participants in Usenet newsgroups or online bulletin boards of the eighties, all too mindful of keeping one's true identity under wrap, going such length as creating fictional characters as one's own surrogate in cyber-participation. In its place is a new generation of netizens that has practically grown up with the internet. Compared to their cyber-seniors, they are much more willing to open up their life to strangers. This is an era of sharing; social networking has been the rage for good reasons. Personal information is both a currency and a commodity that one exchanges with one another, not only socially but also economically.

What this thorough transformation of cyberspace means to our privacy is not to be taken lightly. People's attitude toward privacy is different. They still want it, but at the same time they know they could gain by sharing. They stand to lose—by being shut out of social networks, by missing out on opportunities, by giving up convenience and efficiency here and there—if they guard their informational self too tightly. As they hesitate and agonize, commercial interest the snake lurks and whispers. All too often, it offers a simply too tempting to resist; life is easier just to give up the fight, or so it often seems.

Crafting privacy law in this space and age takes wisdom, courage, and most of all, patience, lest we build the house on quick sand. Hopefully this paper will shed some light on where things stand.

The Foundation of Privacy

Tentative title:

“Privacy” in Traditional Chinese Societies

Contributor:

Liu, Ting-Chi

Assistant Professor, College of Law, National Chengchi University (Taiwan)

S.J.D., The George Washington University Law School (2009)

Abstract:

This paper will try to refute the views of some scholars that the Chinese did not have the concept of privacy in the past, and there is no Chinese equivalent of the English word *privacy*. From the outset, this paper will point out that there are different concepts of privacy even in the Western world. They include physical privacy, informational privacy, decisional privacy, and spatial privacy, just to name a few. In addition, scholars vary on the philosophical foundations of the concept: from secrecy to intimacy to personhood.

This paper then explores Confucian thought—which plays an important role in the Chinese culture tradition—and ancient Chinese laws (e.g., the laws of Tang Dynasty and Ching Dynasty) in order to identify those concepts or values that closely resemble the Western concept of privacy. This paper will conclude with the observation that although a right-based privacy concept, which emphasizes individuality, might not exist in traditional Chinese society, there are ideas and practices in ancient China that reflect and resemble the various privacy concepts embraced by contemporary Western countries.

Rethinking the Feminist Debate on Privacy :Constructing the Theoretical Foundation for the Public-Breastfeeding Laws:

Hsiaowei Kuan

I

In countries around the world, breastfeeding mothers have uncomfortable experiences if they nurse their baby in public. Some were ousted from the restaurants and some harassed by police threatening to charge them of indecency in public. In some countries, breastfeeding advocates organized mothers to stage nurse-out in the public places to protest unfriendly laws on public breastfeeding. In the past decade, breastfeeding laws permitting public breastfeeding were enacted in many countries and some laws requires nursing rooms be set up in public facilities.

In recent years, breastfeeding legislations were passed in most of the states of the United States. Yet the social attitude toward breastfeeding in public remains controversial and breastfeeding mothers still face challenges even though the law says it is legal. In the United States, some states considered requiring a mother to breastfeed discreetly or allow mothers to breastfeed in public only if there was no designated area for them to go. Breastfeeding advocates contested that these attempts purport to segregate breastfeeding women from the public although from the first look the laws are protecting mother's right.

In the case of *Dike v. Orange County School Board*, 650 F.2d 783 (5th Cir., 1981), the US federal court of appeals recognized that women has a right to breastfeed because breastfeeding is "intimate to the degree of sacred". The decision based the constitutional right to breastfeed on the privacy case of *Griswold v. Connecticut*, stating that women's decision to breastfeed should be protected. Therefore, some feminists challenge that the privacy approach to establish the theoretical basis for women's right to breastfeed can be dangerous for women.

Whether constructing women's rights on the theory of privacy really benefit women? This question has long been debated among legal feminists. Many feminists, for instance, Catharine MacKinnon, worry that the public/private dichotomy has become a shield to cover up domination, degradation and abuse of women and leave the private domain from scrutiny. Therefore, privacy can be dangerous for women when it encourages nonintervention by the state. Other feminists, for instance, Anita Allen, reject the idea that feminist should abandon privacy completely. The total rejection of privacy leads everything open to the public and invites state intrusion with no limit into women's most intimate and private sphere.

Will the privacy approach to the right to breastfeed again trap women in the private sphere? What challenges will this approach face? If the privacy approach does not work, what will be the viable alternative? This paper will re-examine the debate on privacy among legal feminists and discuss whether the current privacy doctrine on the right to breastfeed effectively provides a theoretical description of this right.

Wen-Tsong Chiou*

It is now commonplace to hold that across countries the rationale underlying data protection laws, laws that provide either comprehensive or selective statutory protection to a plethora of sundry personal data, is a privacy right or, in a different vein, a constitutional liberty to control one's own information. As a right to protect a person's most private sphere from unwanted intrusion, privacy, for most legal scholars, assures one's freedom to choose and define one's personality and necessarily entails one's liberty to control personal data. Nevertheless, some of the personal data is of little or no implication to personality and yet enjoys the shelter of data protection laws. On the other hand, personal information is used to produce the knowledge contributing to the growth of bio-political power is escaped from scrutiny because it is provided by people with their wholehearted consents. We face a theoretical inconsistency in reasoning the grounds for the protection of personal information. This article argues that the current theory of privacy suffers from the fallacy of a voluntarist version of personhood thesis. It wrongly assumes that personality or personal identity is something that persons are able to define for themselves in the absence of external interference with certain conducts, roles, values and relationships they choose to undertake, to play, to espouse and to enter. Personality is unavoidably, however, socially constructed. A view attending to the constituted nature of personality demands that the constitutional right to privacy looks beyond freedom of choice or "liberty as license." Privacy right, if we are to maintain a "freer" condition for identity formation, requires that the role personal data plays in knowledge production be scrutinized and the effects of knowledge on the construction of personal identity be considered. People are free to dispose the kinds of personal data that has nothing to offer for knowledge production that entails constitutive effects on personal identity. While data protection laws could extend their generous arms to those kinds of personal data, a differential treatment should be made between such data and that indeed deserves the concern of constitutional privacy.

*Associate Research Professor, Institutum Iurisprudentiae, Academia Sinica; S.J.D., University of Virginia.

Chinese and Western Conceptions of Privacy:
Hybridizing towards Convergence?

Charles Ess

Lü Yao- huai

In 2004-2005, the authors collaborated in the development of what has become a landmark series of articles on diverse cultural conceptions of privacy.¹ In particular, Prof. Lü argued that Chinese conceptions of privacy were clearly changing – i.e., from a conception of *Yinsi* (隐私) as a “shameful secret,” or something hidden or bad (so the Chinese Dictionary of Law, 1985) towards a more positive conception of *Yinsi* (隐私) as “a personal thing people do not wish to tell others or to disclose in public” (Lü, 2005). This shift in the valuation of privacy has accompanied a further shift – namely, away from a more traditional Chinese sense of the self as a *relational* self (i.e., a self defined primarily in terms of the multiple relationships with others, e.g., as parent, child, sibling, etc.) towards a more *individual* sense of self (as exemplified in young people’s insistence on *individual* privacy from their parents – see Lü, 2005, p. REF).

¹ See: Lü, Yao-huai, “Privacy and Data Privacy Issues in Contemporary China,” *Ethics and Information Technology* 7 (1: 2005): 7-15; Ess, Charles, “Lost in Translation?: Intercultural Dialogues on Privacy and Information Ethics” (Introduction to Special Issue on Privacy and Data Privacy Protection in Asia), *Ethics and Information Technology* 7 (1: 2005): 1-6.

For his part, Ess argued that a comparison of privacy laws in diverse “Western” nations (specifically, Germany and the United States) and “Eastern” nations (specifically, China and Hong Kong) demonstrated a *pluralistic* structure in such laws. That is, on the one hand, the *justifications* for these laws differed dramatically: briefly, privacy laws in the Western examples relied first of all upon appeals to individual rights (including freedom of expression as well as to privacy *per se*) while parallel laws in the Eastern examples justified privacy from more collective bases, e.g., the importance of online security for the sake of e-commerce and economic growth, etc. On the other hand, despite these fundamental differences in their starting points, the emergent privacy laws at least converged towards a shared or “focal” conception of privacy rights for the individual. As Ess argued, this structure of a shared ethical norm that is nonetheless interpreted or applied in diverse ways, reflecting the fundamental values and practices of irreducibly different cultures, thereby exemplified the sorts of ethical pluralisms found more broadly in, e.g., both Aristotle and Confucius, as well as other global ethical traditions.

More recently, Ess has built upon these starting points by taking up the media theory developed in the 20th century by Harold Innis, Elizabeth Eisenstein, Marshall McLuhan, and Walter Ong – a theory that demonstrates strong correlations between diverse modalities of communication (namely, orality, literacy, print, and what Ong calls the “secondary orality” of electric media, beginning with radio, movies, and TV) and our foundational conceptions of self. Ess has sought to extend these earlier theoretical developments with more recent contributions from communication scholar Naomi Baron (2008) and Zsuzsanna Kondor (2009),

as these scholars help us extend Ong's 2

notion of “secondary orality” to what Kondor calls the secondary literacy of contemporary computer-mediated communication (whether via “traditional” computational devices such as desktop or laptop computers, or through smart phones as Internet-enabled communication devices). In its simplest (i.e., oversimplified) form, the resulting framework foregrounds strong correlations between the *relational* self and *orality*, followed by the gradual emergence of a reflective self affiliated with *literacy*. The modern Western conception of the individual as a rational *autonomy* – i.e., a being capable of giving itself its own law – emerges only in conjunction with *print*. By contrast, at least in the West, Ess argues that the secondary orality-literacy of online communication is accompanied by a shift from a modern Western sense of the self as a rational individual towards a more *relational* sense of self. This more relational sense of self explains, for example, why young people in the West appear to be moving towards a conception of “group privacy,” e.g., sharing in social networking sites such as Facebook what were once intimate, strictly individual sorts of information with small groups of friends – in ways that scandalize their elders as more rooted in a more traditional *individual* sense of privacy. More precisely, Ess argues that we may be witnessing in the West a *hybrid* sense of self or identity – one that conjoins both a modern Western individual sense of self with a more *relational* sense of self, where these relationships are facilitated through social networking sites and other forms of networked communication.

If Ess is correct, then a striking symmetry appears to be emerging alongside the earlier *pluralism* apparent in the privacy laws of diverse “Western” and “Eastern” countries. That is, as Lü sees a shift from a more relational self towards a more individual self in the cases of Japan and China, so Ess sees in Western examples a shift from a more individual self towards a more relational self. A key question here is: how far will the resulting senses of selfhood represent a *hybridization* of both individual and relational selves – and/or: is it conceivable that the Western shift towards a more relational self will lead to the dissolution of the individual self altogether, and/or that the Eastern shift towards a more individual self will leave behind the relational self altogether?

In our paper, we seek to explore these changing trends and questions, with a view towards determining:

- 1) how far do the shifts in each cultural domain suggest that the selves emerging in conjunction with computer-mediated communication and digital media are selves that will *replace* or simply *complement* (i.e., *hybridize*) with the earlier sense of selfhood and identity?

Depending on our answers to this question - *if* it appears that in both “East” and “West” such a *hybridization* is taking place, then we can argue that the hybridizing selves in both Eastern and Western traditions

- A) mirror one another nicely – but in such a way as to remain clearly rooted in their respective cultural traditions (the one more recently individualist, the other more recently relational), while at the same time
- B) thereby present a second structure of *pluralism* – i.e., these hybridizing selves are thereby both closely similar while remaining irreducibly different.

If so, then this would further mean, finally, that

C) the pluralism of such hybridizing selves thereby underlies and justifies the first pluralism Ess has argued holds for privacy laws as such.³ We will explore these possible developments first of all *empirically*, i.e., by seeking to collect evidence in the form of recent research in computer-mediated communication that illustrates whether or not such shifts in conception of selfhood are in fact taking place – and if so, how far these shifts represent a hybridization (as predicted by the Innis-Eisenstein-McLuhan-Ong theory).

We will then use our empirical findings as the basis for determining how far such changing senses of self indeed mesh with a first pluralism in privacy laws – and/or, how far such changing senses of self may be pushing our diverse countries and cultures to develop different sorts of privacy laws (including, e.g., the complete absence of privacy expectations in certain instances), thereby undermining the pluralism thesis.

Whatever our results, our collaboration should thereby offer new insight to the larger project of information ethics to establish a globally shared but nonetheless culturally pluralistic set of ethics regarding the uses of information technologies. At the same time, our findings should shed some light on the larger questions surrounding privacy – i.e., whether or not “privacy” represents a universally

隨著生物科技的發展及辨識技術進步，利用現代科技如紅外線遙測、指紋、虹膜等辨識技術，快速取得生物特徵等個人資訊，已逐漸廣泛應用於人類生活中。至於如何有效利用科學技術，並兼顧個人隱私權利之維護，已成為國際間新興議題。本計畫試圖透過跨領域的對話與研究，在科技與隱私之間找到最佳平衡點。

新興科技所衍生的個人隱私保障課題，在國際間發展出多元之研究脈絡。歐洲與美國衍生出不一樣的價值取向與保護方式。而歐盟相關研究的發展，更帶動整體規制思想與法律制度上，重視軟性法律（soft law）的趨勢。本計畫預期從台灣與亞洲地區對於歐盟個人資料保護上的理念認同情形，以及對於歐盟重視治理的規制方式此一發展趨勢的理解與認同程度，作為研究主軸。藉此瞭解從規制面與資料保護之實體課題兩方，歐盟所發展出的特殊文化取向與規制方式，在台灣以及亞洲主要國家被接受的程度與產生的獨特議題。此舉不僅可以使各國研究團隊，能進一步掌握未來規制發展的可能趨勢，也在比較研究過程中，更清楚歐盟相關議題的發展以及台灣等亞洲國家未來得以投入研究的重要方向。

本計畫屬於歐盟第七架構計畫（FP7）之 RISE（Rising pan-european and international awareness of biometrics and security ethics）子計畫。由台灣政治大學法律系特聘教授 陳起行博士帶領相關研究團隊與義大利 CSSC 中心（Center for Science, Society and Citizenship）Emilio Mordini 教授所帶領之跨國研究團隊共同合作。並已於 2010 年 10 月在台北籌辦國際研討會，並於會中與世界各國專家交流意見，試圖尋求最佳解決方案的可行性。

本研究預計於西元 2011 年在中國大陸舉行第二次國際學術研討會，藉此延續研究成果並提供充分交流的溝通平台，進行跨學界之對話。會議全程以英文進行，將邀請與 FP7 RISE 計畫主持人，歐盟學者專家，以及亞洲國家代表，共同參與討論。藉由歐美與中國大陸等專家學者共同對話，交流研究成果與討論相關議題，有助於凸顯相關議題之文化差異並增進彼此瞭解，更期待藉由本活動開啟相關研究議題之後續研究與討論。

議程初稿

主題：生物辨識與隱私保障：理論與實踐

日期：2011/10/20-21

擬邀請者：

- Emilio Mordini, FP7 RISE Project Coordinator
 - 歐洲個人資料保護法學者專家：2 人
 - 邱映曦 CHIU, YING-HSI, 組長 Senior Manager, 科技應用法制組 Technology Application Section, 科技法律中心 Science & Technology Law Center, 財團法人資訊工業策進會 Institute for Information Industry(III)
 - 日本情報處理開發協會 (Japan Information Processing Development Cooperation, JIPDEC)專家代表一名
 - 韓國情報通信產業協會 (Korea Association for ICT Promotion)專家代表一名
 - 大連軟件行業協會 (Dalian Software Industry Association)專家代表一名
 - 美國加州柏克萊大學法學院科技與法律研究中心隱私保障學者代表一名
 - Prof. Charles Ess, 及其研究伙伴大陸學者 Lü Yao-huai
 - 台灣隱私權學者：6 人
 - 大陸北京以外法學者代表三名
- 連同本研究三位主持人 一共 19 人

報告人因此懇請貴會變更原先經費之申請如下：

基於以上擬邀請名單，第二年度國外專家至北京開會之預算，由原先之 67 萬元增至 100 萬元；原先申請之國外差旅費，則由 71 萬元減至 30 萬元，就國外差旅部分，報告人仍希望貴會能補助本研究團隊參與 2011 年 5 月在華盛頓舉行之跨大西洋兩岸研討會，已掌握 **Biometrics** 與隱私保障的歐美談判與學理上最新的發展；以及 2011 年 11 月在布魯塞爾舉行之 RISE 國際研討會，計畫主持人已經告知，該會議上將正式成立一國際基金會，長期推動 **Biometrics** 相關倫理，隱私保障議題的研究與國際對話。參與該會議，台灣團隊能夠進一步成為該基金會的發起與核心成員。

議程：

10/20th (Thursday)

9: 00 – 10:00: 開場與主題演講

10:30 -- 12:30 隱私保護法律基本問題

七篇隱私權基本問題之論文發表，評論及討論
報告之論文名稱及摘要，參考附件四

14:00 – 17:00 亞洲個人資訊管理系統的發展

這部分將邀請國內，日本，南韓，大連市負責個人資訊管理（PIM）

系統運作的專家學者，以及歐，美專家學者探討這項制度在亞洲數國的發展，以及其符合歐盟隱私指令，以及美國資訊隱私法制的探討


學理上，這項討論有助於隱私治理議題的開展；實踐上則對於台灣涉及個人資料越境（transborder data flow）時，不至於受到他國個人資料保護或其他壁壘的不利影響

10/21st (Friday)



9 – 10:30 中國生物辨識及安全研究中心主任李子青及團隊談商業上的生物辨識研究最新發展，並與法律及其他專業對話

11 – 12:30 Emerging Research on Biometrics Application in Chinese Medicine, 香港理工大學生物辨識研究團隊 Ajay Kumar 教授等，談中醫上的生物辨識研究，並與法律及其他專業領域學者對話。

以上議程均在 2010 年台北 FP7 RISE Taiwan Conference 的工作會議上討論，決定。

	<p><u>Emilio Mordini</u> Founding Director, Centre for Science, Society and Citizenship Rome</p>
	<p><u>Chi-Shing Chen</u> Distinguished Professor, College of Law, National Chengchi University, Taipei Taiwan</p>
	<p><u>Ajay Kumar</u> Assistant Professor, Dept. of Computing, The Hong Kong Polytechnic University Hong Kong</p>
	<p><u>Ching-Yi Liu</u> Associate Professor, Graduate Institute of National Development, National Taiwan University, Taipei, Taiwan</p>
	<p><u>Chung-Min Tuan</u> Dean, College of Law, Shih-Hsin University, Taipei Taiwan</p>
	<p><u>Chung-Young Chang</u> Professor and Director, Graduate Institute of Industrial Economics, Dept. of Public Affairs, Fo Guang University, Yilan Taiwan</p>

	<p><u>Da-Wei Wang</u> Research fellow and Deputy Director, Institute of Information Science, Academia Sinica, Taipei Taiwan</p>
	<p><u>Der-Ming Liou</u> Associate Professor, Institute of Bioinformatics, National YangMing University, Taipei Taiwan</p>
	<p><u>Hwei-Ying, Lucille, Hsu</u> Legal researchers, Science and Technology Law Center, Institute for Information Industry III, Taipei Taiwan</p>
	<p><u>Ivory Yi-Hui Lin</u> Secretary General, Persons with HIV/AIDS Rights advocacy Association of Taiwan Taiwan</p>
	<p><u>James Chun-I Lee</u> Professor, College of Medicine, Dept. of Forensic Medicine, National Taiwan University, Taipei Taiwan</p>
	<p><u>Ming-Li Wang</u> Assistant Professor, Graduate Institute of Industrial Economics, National Central University, Taoyuan Taiwan</p>
	<p><u>Mitchel Chang</u> Senior Vice President of Global Technical Support, Trend Micro Taiwan Taiwan</p>

	<p><u>Nigel Cameron</u> President and CEO, Center for Policy on Emerging Technologies USA</p>
	<p><u>Rahul Jain</u> Senior Consultant, Security Practices, Data Security Council of India (DSCI) India</p>
	<p><u>Ting-Chi Liu</u> Assistant Professor, College of Law, National Chengchi University, Taipei Taiwan</p>
	<p><u>Stan-Z. Li</u> Professor, Institute of Automation, Chinese Academy of Sciences, Beijing China</p>
	<p><u>Vincent Shih</u> Senior Attorney & Director, Microsoft Taiwan Corporation Taiwan</p>
	<p><u>Wen-Tsung Chiu</u> Associate research fellow, Institutum Jurisprudentiae, Academia Sinica, Taipei Taiwan</p>
	<p><u>Xiao-Mei Xai</u> Professor and Director, Graduate Program on Life Science and Ethics, Beijing Union Medical College, Beijing China</p>



Ying-Hsi Chiu

Senior Manager, Science and Technology Law Center, Institute for Information Industry III, Taipei
Taiwan



Yu-Chi Wang

Associate Professor, School of Law, Dept. of Law, Shih-Hsin University, Taipei
Taiwan



Yu-Chung Hu

Professor, Dept. of Computer Science, National Chengchi University, Taipei
Taiwan

行政院國家科學委員會補助國內專家學者赴國外出差報告

99年12月19日

附件三

報告人姓名	陳起行	服務機構 及職稱	國立政治大學 教授
時間 會議 地點	2010. 8. 31 - 2010. 9. 6 Rome, Italy	本會核定 補助文號	NSC 99-2923-I-004-001
會議 名稱	Not applicable		
發表 論文 題目	Not applicable		
(其餘各節見附件)			

一、出差經過

歐盟架構七之下的計畫：Rising Pan-European and International Awareness of Biometrics and Security Ethics (RISE) 是有鑑於生物辨識技術的廣泛運用，而各國相關倫理，法律規範配合的認識不足，所發展的一個研究計畫。一方面，這個計畫透過在全球各地召開工作坊，研討會，以帶動各地區對 RISE 議題的重視，並結合各地的相關專家，展開 RISE 對話與研究。

自從 2009 年三月一日，RISE 計畫開始運作後，截至報告人撰寫本報告時，該計畫先後在下列各地，進行了研討活動：

Mar 12–13, 2009 Rome Kick off Meeting

Sep 24–25, 2009 Delhi Meeting on Privacy and Data Protection in India

Nov 5–6, 2009 Brussels Workshop of Individual Identification

Jan 4–5, 2010 Hong Kong 3rd International Conference of Ethics and Policy of Biometrics

Mar 25–26, 2010 Brussels Workshop on Global Mobility

Sep 23–24, 2010 Brussels Workshop on Cyber Security

Oct. 21st- 22nd, Taipei, FP7 RISE Taiwan Conference

Dec 9–10, 2010 Brussels Stakeholder Conference

未來該計畫仍規劃進行下列研討：

May 5–6, 2011 Washington DC Meeting on Transatlantic Data Sharing

Oct. 20th- 21st, Beijing, FP7 RISE Beijing Conference

Dec 1–2, 2011 Brussels 4th International Conference of Ethics and Policy of Biometrics

Feb, 2012 Rome Conclusion of the project and launching of an international dialogue initiative

RISE 計畫也應歐盟的要求，針對機場運用生物辨識系統進行安檢之倫理，法律規範，提出研究報告（封面如附件一，該報告全文可以由該計畫網站下載：<http://www.riseproject.eu/fileupload/ETHICS%20OF%20BODY%20SCANNER%20POLICY%20REPORT%20NEW.pdf>）。

報告人此次出差，是由於國合處補助條件與原先之規劃有不少出入，必須立刻與總計畫主持人，義大利學者 Emilio Mordini 溝通因應之道。因此八月中拿到貴會補助公文，八月底就飛抵羅馬，與 Mordini 會談。依據 RISE 計畫的理念，原先報告人在今年十月份的研討（參考附件二），是以東南亞等國家相關學者，專家為邀請對象；惟補助公文上限定邀請對象限於 RISE 計畫成員。所有原先的邀請以及規劃，必須做全盤的變更，與計畫主持人面對面溝通，商討快速因應對策，實所必須。

二、心得

Mordini 表示，歐盟恐誤會何以 RISE 成員會議，不在歐盟總部，布魯塞爾，召開；為避免誤解，要求每一場次，不宜有多於一位的 RISE 計畫成員參與。參與報告者，以台灣與 RISE 相關的學者專家為邀請對象。研討主軸因此由亞洲區域研討，改為計畫成員與台灣相關學者專家的對話為主。

此外，Mordini 表示，Oxford University Press 請其負責編輯一本專書：Foundation on Privacy, 法律方面，希望我能負責，並成為共同編輯，將研討會中，優秀的論文，能夠進一步發展成該書的專章。

研討會的議程，經過與計畫主持人研究後，最終將主題與主要邀請人選確定（請參考附件三，十月分台灣研討會的議程）。FP 計畫，設計歐盟，成員國的計畫成員，以及非歐盟成員國之計畫成員，因此涉及面向較多，各方面有各自獨特的考量，參與後，才能體會掌握各個溝通環節之重要性，算是難得的經驗，也希望日後能分享國內其他的計畫參與者。

四、建議

報告人的參與經驗，在摸索中進行。為避免國內其他參與單位或個人，經歷相同或類似的狀況，日後可以安排經驗分享系列，使得每一個環節，計畫參與者都能有心理上的預期，以及適當的準備，以避免溝通不足而造成額外成本之增加。目前政大做為 FP 計畫 security 項目下的 National Contact Point, 將安排報告人對國內其他院校有心參與 FP 計畫者，提供經驗分享。



POLICY Report

Whole Body Imaging at airport checkpoints: the ethical and policy context



CENTRE FOR SCIENCE, SOCIETY AND
CITIZENSHIP

HIDE & RISE Projects

POLICY Report

歐盟第七架構計畫 RISE 亞洲研討會：台北 FP7 RISE Asian Conference: TAIPEI

Time		Panel / Theme		Introduction
Oct. 21 st Thursday	13:00 - 13:05	開場介紹		介紹與會嘉賓與會議緣起
	13:05 - 15:00	1	疾病管制之科技應用與隱私保護	本場次將邀請兩岸於 SARS 和 H1N1 流行期間曾深入疾病防治實務的專家分享相關經驗，並邀請學者探討科技對疾病管制領域發揮的影響。科技，是否對防治產生了正面的效果？
	15:00 - 15:30	茶敘		
	15:30 - 17:30	2	科技應用與隱私保護之治理網站	將展示由本計畫所建構，運用網路治理平台進行疾病管制議題之科際對話的實驗成果，並討論其未來發展及運用。
	19:00 - 21:00	Welcome Party		邀請來自世界各國的與會者進行非正式的餐敘。預定在立德台大尊賢會館舉辦。
Oct. 22 nd Friday	09:30 - 11:00	3	亞洲生物辨識技術應用與隱私保護（一）	將邀請各國學者探討亞太地區：新加坡、澳大利亞、紐西蘭、馬來西亞、印尼、菲律賓、台灣、日本、韓國等地之生物辨識技術應用與隱私保護發展現況。
	11:30 - 13:00	4	亞洲生物辨識技術應用與隱私保護（二）	本場次集中在大陸地區之生物辨識技術與隱私發展。邀請不同領域的學者對於科技面、生物倫理面、以及隱私法制面做不同的探討。
	13:00 - 14:00	午餐		
	14:00 - 15:30	5	亞洲生物辨識工業的發展與人權保障	亞洲各國生物辨識工業的發展現況的分析以及主要人權保障議題之提出與探討
	15:30 - 16:00	茶敘		
	16:00 - 17:30	6	隱私概念及制度：東西（方）的對話	東西方文化對於隱私概念在認知上有何相異或相同之處？本場次將從哲學面向、倫理學面向、以及制度面向進行深入的探討。



FP7 RISE PROJECT
<http://www.riseproject.eu/>
TAIWAN CONFERENCE



Oct. 21st - Oct. 22nd



National Chengchi University (NCCU)
College of Law
13th Fl. Conference Room

Material Related to the Conference Could be Downloaded at:

<http://fp7rise.cs.nccu.edu.tw/ac/>

Further question, please contact:

JONA CHIANG [MAILTO:jona525@gmail.com](mailto:jona525@gmail.com)

Program Schedule

21st October 2010, Thursday

13:00-14:30 Opening Session

13:00-13:30 Emilio Mordini

Founding Director, Centre for Science, Society and Citizenship, Rome

13:30-14:00 tbc

14:00-14:30 Chih-Jung Chou (周志榮)

Director, Dept. of Legal Affairs, Ministry of Justice, Taiwan

Recent Development in Taiwan's Personal Data Protection Laws

14:30-14:50 Refreshments

14:50-16:10 1ST Session: Privacy, Security and Liberty in the Asian I

Session Chair/Discussant: Yu-Chi Wang (王郁琦)

Associate Professor, School of Law, Dept. of Law, Shih-Hsin University, Taipei, Taiwan

14:50-15:10 Ching-Yi Liu (劉靜怡)

Associate Professor, Graduate Institute of National Development, National Taiwan University, Taipei, Taiwan

Privacy, Security, and Liberty: Converging or Diverging in Asia

15:10-15:30 Yu-Chung Hu (胡毓忠)

Professor, Dept. of Computer Science, National Chengchi University, Taipei, Taiwan

Privacy Preserving Data Sharing Policy for National Security Enforcement

15:30-15:50 Da-Wei Wang (王大為)

Research fellow and Deputy Director, Institute of Information Science, Academia Sinica, Taipei, Taiwan

How to Share Data While Preserving Personal Privacy

15:50-16:10 Discussion



- 16:10-17:30 2nd Session: Privacy, Security and Liberty in the Asian II**
Session Chair/Discussant: Nigel Cameron
President and CEO, Center for Policy on Emerging Technologies, USA
- 16:10-16:30 Wen-Tsung Chiu (邱文聰)**
Associate research fellow, Institutum Jurisprudentiae, Academia Sinica, Taipei, Taiwan
tbc
- 16:30-16:50 Ming-Li Wang (王明禮)**
Assistant Professor, Graduate Institute of Industrial Economics, National Central University, Taoyuan, Taiwan
Openness: An Alternative Approach to Cyber-security
- 16:50-17:10 Ying-Hsi Chiu (邱映曦)**
Senior Manager, Science and Technology Law Center, Institute for Information Industry III, Taipei, Taiwan
The Development of Personal Data Management in Asia
- 17:10-17:30 Discussion**
- 17:30-19:00 Welcome Session**
Hosted by Prof. Kai-Lin Fuang, Dean of College of Law, NCCU



22nd October 2010, Friday

09:00-10:40 3rd Session: Cyber-Security and the Internet

Session Chair/Discussant: Ting-Chi Liu (劉定基)

*Assistant Professor, College of Law, National Chengchi University,
Taipei, Taiwan*

09:00-09:20 Rahul Jain

*Senior Consultant, Security Practices, Data Security Council of
India (DSCI), India*

Perspectives on Privacy in a Connected World

09:20-09:40 Vincent Shih (施立成)

Senior Attorney & Director, Microsoft Taiwan Corporation

Security of Cloud Computing

09:40-10:00 Mitchel Chang (張中明)

*Senior Vice President of Global Technical Support, Trend Micro
Taiwan*

Emerging Security Challenges & Defense Strategy

10:00-10:20 Chung-Young Chang (張中勇)

*Professor and Director, Graduate Institute of Industrial Economics,
Dept. of Public Affairs, Fo Guang University, Yilan, Taiwan*

Cyber-security and national security: international practices

10:20-10:40 Discussion

10:40-11:10 Refreshments

11:10-12:30 4th Session: Global Mobility and Public Health

Session Chair/Discussant: Chi-Shing Chen

*Distinguished Professor, College of Law, National Chengchi
University, Taipei, Taiwan*

11:10-11:30 Xiao-Mei Xai (翟曉梅)

*Professor and Director, Graduate Program on Life Science and
Ethics, Beijing Union Medical College, Beijing, China*

Governing of New Influenza in China

11:30-11:50 Chi-Shing Chen (陳起行)

*Distinguished Professor, College of Law, National Chengchi
University, Taipei, Taiwan*

A Discursive Approach Toward New influenza governance



11:50-12:10 Ivory Yi-Hui Lin (林宜慧)

Secretary General, Persons with HIV/AIDS Rights advocacy Association of Taiwan

Genuine Quarantine or Marked Discrimination?

12:10-12:30 Discussion

12:30-13:50 Lunch

13:50-15:10 5th Session: Biometrics and Identification Technologies I

Session Chair/Discussant: Ajay Kumar

Assistant Professor, Dept. of Computing, The Hong Kong Polytechnic University, Hong Kong, China

13:50-14:10 Stan-Z. Li (李子青)

Professor, Institute of Automation, Chinese Academy of Sciences, Beijing, China

Recent Advances in Face Biometrics and Security Surveillance

14:10-14:30 Der-Ming Liou (劉德明)

Associate Professor, Institute of Bioinformatics, National YangMing University, Taipei, Taiwan

The Development of Telecare Service in Taiwan

14:30-14:50 Huei-Ying, Lucille, Hsu (許慧瑩)

Legal researchers, Science and Technology Law Center, Institute for Information Industry III, Taipei, Taiwan

Cyber Security and the Real Name System in Asia

14:50-15:10 Discussion

15:10-15:40 Refreshments

15:40-16:40 6th Session: Biometrics and Identification Technologies II

Session Chair/Discussant: Chung-Min Tuan (段重民)

Dean, College of Law, Shih-Hsin University, Taipei, Taiwan

15:40-16:00 James Chun-I Lee (李俊億)

Professor, College of Medicine, Dept. of Forensic Medicine, National Taiwan University, Taipei, Taiwan

Forensic DNA Profiling in Taiwan



FP7 RISE Project Taiwan Conference

16:00-16:20 Ting-Chi Liu (劉定基)

*Assistant Professor, College of Law, National Chengchi University,
Taipei, Taiwan*

Privacy Concerns in Forensic DNA Databases

16:20-16:40 Discussion

16:40-17:10 Conclusion Session

Emilio Mordini

*Founding Director, Centre for Science, Society and Citizenship,
Rome*

Chi-Shing Chen

*Distinguished Professor, College of Law, National Chengchi
University, Taipei, Taiwan*

17:10-19:00 Farewell Session

*Hosted by Prof. Ming-Cheng Kuo, Dir. Institute of Law and
Inter-discipline, Vice Dean, College of Law, NCCU*

國科會補助計畫衍生研發成果推廣資料表

日期:2011/02/22

國科會補助計畫	計畫名稱: 歐盟生物辨識與隱私保障國際對話計畫(1/2)
	計畫主持人: 陳起行
	計畫編號: 99-2923-I-004-001- 學門領域: 基礎法學
無研發成果推廣資料	

99 年度專題研究計畫研究成果彙整表

計畫主持人：陳起行		計畫編號：99-2923-I-004-001-					
計畫名稱：歐盟生物辨識與隱私保障國際對話計畫(1/2)							
成果項目		量化			單位	備註（質化說明：如數個計畫共同成果、成果列為該期刊之封面故事...等）	
		實際已達成數（被接受或已發表）	預期總達成數(含實際已達成數)	本計畫實際貢獻百分比			
國內	論文著作	期刊論文	0	0	100%	篇	隱私理論及制度面文章，六為國內法學者參與撰寫，預計在十月北京發表，研討後，委由 Oxford U. Press, 出版。本計畫歐盟總主持人為編輯。
		研究報告/技術報告	0	0	100%		
		研討會論文	0	6	100%		
		專書	0	0	100%		
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		
	技術移轉	件數	0	0	100%	件	
		權利金	0	0	100%	千元	
	參與計畫人力 (本國籍)	碩士生	3	0	100%	人次	
		博士生	1	0	100%		
博士後研究員		0	0	100%			
專任助理		0	0	100%			
國外	論文著作	期刊論文	0	0	100%	篇	隱私理論及制度面文章，一位美國及一位大陸學者共同參與撰寫，預計在十月北京發表，研討後，委由 Oxford U. Press, 出版。本計畫歐盟總主持人為編輯。
		研究報告/技術報告	0	0	100%		
		研討會論文	0	1	100%		
		專書	0	0	100%		
	專利	申請中件數	0	0	100%	件	
		已獲得件數	0	0	100%		

技術移轉	件數	0	0	100%	件	
	權利金	0	0	100%	千元	
參與計畫人力 (外國籍)	碩士生	0	0	100%	人次	
	博士生	0	0	100%		
	博士後研究員	0	0	100%		
	專任助理	0	0	100%		

其他成果 (無法以量化表達之成果如辦理學術活動、獲得獎項、重要國際合作、研究成果國際影響力及其他協助產業技術發展之具體效益事項等，請以文字敘述填列。)	<p>參與機場安檢與隱私保障研究，研究成果遞交歐盟副總裁，並被歐盟議會接受成為正式文件。</p> <p>結合國內產官學界與本計畫各國研究團隊在台北召開兩天研討會，開啟對話。</p> <p>本團隊為該計畫中最完整之法律團隊，將在 2011 年十月發表隱私權保障之理論及制度面研究成果，包括歐美學者亟欲理解之傳統中國文化下，隱私概念及保障的發展，以做為東西對話之基礎。</p> <p>運用治理網站於國際間隱私保障最佳實踐方案的理論，制度，及網路運作之探討，並帶動此歐盟計畫日後在此一領域的進一步發展。</p>
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	成果項目	量化	名稱或內容性質簡述
科教處計畫加填項目	測驗工具(含質性與量性)	0	
	課程/模組	0	
	電腦及網路系統或工具	0	
	教材	0	
	舉辦之活動/競賽	0	
	研討會/工作坊	0	
	電子報、網站	0	
	計畫成果推廣之參與(閱聽)人數	0	

國科會補助專題研究計畫成果報告自評表

請就研究內容與原計畫相符程度、達成預期目標情況、研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）、是否適合在學術期刊發表或申請專利、主要發現或其他有關價值等，作一綜合評估。

1. 請就研究內容與原計畫相符程度、達成預期目標情況作一綜合評估

達成目標

未達成目標（請說明，以 100 字為限）

實驗失敗

因故實驗中斷

其他原因

說明：

2. 研究成果在學術期刊發表或申請專利等情形：

論文： 已發表 未發表之文稿 撰寫中 無

專利： 已獲得 申請中 無

技轉： 已技轉 洽談中 無

其他：（以 100 字為限）

3. 請依學術成就、技術創新、社會影響等方面，評估研究成果之學術或應用價值（簡要敘述成果所代表之意義、價值、影響或進一步發展之可能性）（以 500 字為限）

生物辨識運用衍生之隱私及倫理課題，目前對社會衝擊甚深，本計畫對於機場全身掃描的課題提出正式研究報告，被歐盟議會納入正式文件，台灣團隊舉行之研討會，也全面探討該科技各層面運用所生之倫理及法律課題，首度將國內相關產學界與各國研究團隊納入同一平台，開啟對話。