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The General Data Protection Regulation and the ethical use of social media data at an Alternative Dispute Resolution

By Laiz de Souza Moreira

A dissertation presented to the Independent College Dublin
Master in Dispute Resolution

November, 2020

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Abstract

It is a thesis that I wrote to be as part of my master's degree in Dispute Resolution at independent college Dublin.

We just start the second decade of the 21st century, and social media like IG, Facebook or Tik Tok are highlighted to create a new interface to interact with people. At the same time, many other problems were identified after the technology made part of our lives.

To help us to lead with the inconveniences of social media and the internet in general, the countries building laws to decrease the number of disruption although the system law is not that faster than the internet and technology and yours dispositive. When the congressmen are discussing the limits to impose in the law, one aspect is essential, the ethic.

This way, the concerns are increasing to think about the limits of privacy and the right to information and how the legal system regulates this situation. So I wanted to do a little more research on the theme, and the results are in this dissertation, there is a discussion about ethics in the context of alternative dispute resolution from data collected in social media and the impact of the law in force GDPR. The topic of this research is based on my concerns in the world where people expose every detail of your life and what is the ethic limit to explore the world of social media respecting the human right of privacy in the context of a mediation or other alternative dispute resolution and about a possibility to use the data from social media in a dispute resolution in an ethical way.

Keywords: social media, ethics, Alternative Dispute Resolution

Introduction

In the digital world, where people are more connected than ever on the worldwide web, by laptop or mobile, is significant to think about the uses of the apps and the potential harms in our lives. The people are connected for every single action in their lives are realized with the help of an electronic device or app, and they do not realize how much about their privacy reveals on social media. The way you use social media can have a huge effect, positive or negative, on your life.

Since the arrival of early social networking sites until now, online social networking platforms have expanded exponentially. Estimating that forty-five per cent of the world's population uses social networks. That implies a shocking 3.48 billion people connect to some form of social media, according to data collected by Hootsuite.

Obviously, Social media platforms have many benefits as keep in touch with family and friends, expand networking, sharing the idea and interests in common. With the advent of this pandemic, everyone uses the online platforms to feel connected with family or friends because of the protocol of social distance.

In the other hand, generally, it is possible to imagine social media which collect and store huge amounts of personal information. The large influx of personal data that has become accessible online due to users share all sorts of information as personal pictures and status updates.

Whereas, Social media is modifying our interactions with people due to the fact we are making parts of your life public on the Internet. The Concern about personal data and ramifications is arising from the past two year due to the quick development of social media and their soar importance in our lives.

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arising and it won a spotlight was from the past two year due to the quick development of social media and the advent of GDPR.

The GDPR is a tool with the objective of regulate for protecting fundamental rights and freedoms of natural persons and in particular, their right to the protection of personal data applied to the processing of personal data in the context of the activities of an establishment of a controller or a processor for the countries to European Union.

So, I started a research about that concerning, and the result is presented in this study. It is important to define the purpose of this study is to evaluate the question of ethics in using social media data in alternative dispute resolution, according to the General Data Protection Regulation. Concerning reaching this goal, the research was divided into five chapters and a conclusion.

Chapter one is divided into three pillars of the building idea of this study, the study of the concept of personal data da perspective do GDPR and also differentiate the data utilized by third parties and utilization of social media data for people that you have a connection. This differentiation was necessary for the comprehension of the type of data was in focus on the research. The second pillar was the types of an alternative dispute resolution. I bring a concise explanation about the types the ADR most utilized in Ireland, mediation and arbitration. The third pillar is the concept of ethics that exploited here is the Imperative Category that Immanuel Kant, a type of deontological moral theory, so that the correctness or incorrectness of behaviour depends, not on their consequences, but on whether they fulfil our obligation.

On the second chapter, I demonstrate the methodological approach and also methods and specifying the tools and procedures utilized to collect the qualitative data. About primary data, I present my questionnaire and the attempts to collected answers. And with the intuition of complete my research, I used secondary data from official information, articles and news from a consecrate newspaper.

On chapter three, I presented all the data collected, with the emphasis on the feedback I received from the participants and also show parts of the texts on the secondary data of more significance. Thereafter, in chapter four, I exposed my considerations about all the material collected in the previous chapter.

In chapter five, it the moment to illustrate the discussion about the thematic, this chapter was divided into two sections: the alternative dispute resolutions and GDPR and ethics. About the first section, I will bring the peculiarities of arbitration and mediation and after that, the discussion of the possibility of using social media data in this type of ADR. In the second section, it will be discussed about the ethics and the correlation with consent present on the GDPR, concerning using data from social media in the ADR mentioned previously.

After that, in chapter 6 is the conclusion of the study, where I will present a conclusion, based on my findings will answer the answer to research.

1. Literature Review

1.1. Social Media and concepts

At this stage, it is intrinsic to our times to share our lives on social media to engage with unknown or with friends. In the power of a click, we can stay connected to news or people in different parts of the world. Between the incredible world in our hands and the responsibility to use social media to grow right actions and not to propagate fake news, it is the sum importance of the discussion about ethics on social media in the most different ways, as journalism, law, or advertising and marketing.

Humanity is experimenting with a specie of desire to be viewed or heard with the advent of social media; it is soaring at such a high level because anyone also can consume and produce content. As mentioned by Jeremy Harris Lipschultz at Social Media Communication: Concepts, Practices, Data,

Law, and Ethics, "The desire of individuals to engage and participate has its roots in technological developments more than five decades ago." ¹

The number of fonts of information is increasing as to how believe Rachel Haot, the chief digital officer for New York City, told Mashable "You see an enormous number of people who are using social media and consuming social media, both producing and discovering information, to a much higher extent than you would at any other point,"² Rachel Haot, the chief digital officer for New York City, told Mashable.

In general people from all age are in contact with at least one type of social media and according to the author Jeremy, "The audience for new forms of social media needs a media and information literacy framework that critically examines new tools and social norms—whether or not the user engages in social media because of her or his career or for general interest".³

The emergence and growing availability of social media including Facebook, Twitter and other platforms has created new and complicated potential ethical challenges for social workers as well as potential opportunities for developing communities of practice (Reamer, 2011)⁴. That way how much more it increases the use of social networks in the first plan, consequently, it soars the number of legal issues due to lack of development of best practices and the use of data within the boundaries of law and normative ethics. The widespread adoption of social media has created both benefits and presented new ethical challenges for social workers. This includes the need for expanded knowledge and guidance for understanding the ethical implications of using social media for social workers and in social work education (Duncan-Daston, Hunter-Sloan, & Fullmer, 2013;

¹ Lipschultz, J., 2018. *Social Media Communication*. 2nd ed. New York, NY: Routledge.

² Berkman, F., 2013. *Sandy Was Our Social Storm, But At What Cost?*. [online] Mashable. Available at: <<https://mashable.com/2013/10/29/sandy-social-media-storm-safety/?europa=true>> [Accessed 30 September 2020].

³ idem 1

⁴ Reamer, F. (2011). Eye on ethics: Developing a social media ethics policy. *Social Work Today*. Retrieved from http://www.socialworktoday.com/news/eoe_070111.shtml

Judd & Johnston, 2012; Reamer, 2009, 2011, 2013)⁵. If I can add an observation, not only to social workers but for everyone to expose yourself to this type of media.

It is relevant to clarify too, as a matter of fact, the type of social media I am based my research is the kind of that the user express yourself in big Storytelling from your perspective to see the facts happens around you or the world, each one of these apps uses different tools to promote your Storytelling, as Facebook using the post on the wall, Instagram using the post in your feed and the stories, twitter and the feed, and many others. According to Ruth E. Page, "Storytelling is an interactive process traces of which can be seen in the conversational formats of social media and are interwoven between online and offline. The range of stories told in the social media context is wide and diverse."⁶ Then, the user of these apps has your own 'voice' amplified, and their posts reach a massive number of spectators, called followers. If you are not a digital influencer, probably your audience is friends and family. However, it is better to pay attention in terms of privacy because maybe the app can be using your personal data without your permission.

Needless to say, the users are exposing facts about their lives and information about themselves, not just their families and friends, but also the apps. There is a hazard in sharing personal information to make the get access to social media sites, as reported by Lee (2013, page 147), "Information on social media sites may not only be searched without permission or knowledge but maybe permanently stored, meaning some material intended to be private may never enjoy a cloak of privacy. Photos, rants, relationship statuses, and people's whereabouts, for example, may always be

⁵ Duncan-Daston, R., Hunter-Sloan, M., & Fullmer, E. (2013). Considering the ethical implications of social media in social work education. *Ethics and Information Technology*.

⁶ Ruth E Page, 2013. *Stories and social media, Identities and Interaction*, New York, NY: Routledge.

“out there” for future employers, dates, neighbours, police investigators, and commercial businesses to mine, share, and utilize.”⁷

Consequently, this idea about unknown people has got access to data from personal life without permission because it is posted on your timeline; it is happening now. Our generation has never been exposed to the internet so much, and it increases questions about privacy, ethics, freedom of speech, and press freedom. This way, my concerns are increasing think about the limits of privacy and the right to information and how to legal system regulates this situation. Nevertheless, in this research, I am questioning the ethical component involved in alternative dispute resolution.

It is a huge concern the Data protection in Europe and established as a fundamental human right in the EU Charter of Fundamental Rights and totally related to the principles of autonomy and human dignity. Besides, there is legislation in force since May of 2018, the General Data Protection Regulation (GDPR), it will be mentioned frequently in this study.

In the document written by experts at the request of the European Commission of DG Research and Innovation and aims at informing the scientific community, and in particular, with beneficiaries of EU research and innovation projects about ethics and data protection, it is hugely informative despite the fact that it is not official guidance. The document is fascinating, and their approach is helpful, but in my case, I was looking for how to proceed in situations about data collected from social media and I could understand how this kind of data it is sensitive and intimately related to autonomy, privacy, and human dignity, one of human right consecrated in The Universal Declaration of Human Rights (UDHR).

In the social media framework, the right to privacy is often settled directly against rights to free speech and information; however, it is relevant to the point that privacy is not an absolute right.

⁷ Lee, L. T (2013). Privacy and Social Media. In A. B. Albarran (Ed.), *The Social Media Industries*. New York, NY: Routledge.

When it refers to the constitution or other legal dispositive, there is a balance to need to keep between privacy and other civil rights.⁸

Thereupon, the advantage in the article is the language is easier to understand in comparison to reading law GDPR and the legal terms, and they bring visual aids to a better explanation as tables, in this way, it is more direct to the point.

It is crucial to know before your start to use social media the user need to create an account, in other words, register and log in. Also, it is at this moment, and the social media companies specify the privacy notices and how they can obtain user consent. The problem is most users click to accept privacy notices and consent declarations without reading or understanding them.

Consistent with LOTHAR DETERMANN (2012)⁹, in relation to the consent requirements apply only to the data processing practices of social media companies with respect to data they collect from their users (through registration forms and cookies). In other words, just affect the data collected by apps and not the data produced by the user and posted on social media platforms. Generally, most part of the problems with users and privacy is related to the data that users post about themselves and others that tend to affect privacy interests most significantly.

At this point, it is pertinent to differentiate the data collected by apps called by cookies and the data created by the user and personal data. In consonance with the European Commission website, the definition of a cookie is a small text file that website stores the purpose is to enable the site to remember your preferences like user name, language, etc., for a certain period of time on your computer or mobile device when you visit the site, but also can collect information without permission as location or used to store user preferences for a specific site, because of that can be valued for e-commerce. The obstacle with the data collected by apps is the commercial value

⁸ 2012 STAN. TECH. L. REV. 7 <http://stlr.stanford.edu/pdf/determann-socialmediaprivacy.pdf>

⁹ idem 8

aggregate and how the social media monetize this through the sales of information. However, the focus here is on the data created by the user and the privacy of that data and ethics involved. Besides, the concept of personal data is determined by the law, pursuant to article 4.

"(1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;"¹⁰

The law specifies other concepts of personal data as biometrical and genetic data; however, to the purpose of this study is not significant. Moreover, in light of the fact that that definition is wide due to cover the most number of circumstance is possible.

On the other hand, the European commission translates the personal data as any information that relates to an identified or identifiable living individual. Furthermore, personal data might be different pieces of information, which collected together can lead to the identification of a particular person, also constitute personal data, by way of illustration: a name and surname; a home address; an email address such as name.surname@company.com; an identification card number; the location data function on a mobile phone; an Internet Protocol (IP) address; a cookie ID; the advertising identifier of your phone; data held by a hospital or doctor, which could be a symbol that uniquely identifies a person.¹¹(What is personal data?, 2020)

Consequently, the user of social media and their content can be framed as personal data according to terms enunciated above, because the user exposes a picture, location, status about themselves or

¹⁰ Eur-lex.europa.eu. 2020. *EUR-Lex - 32016R0679 - EN - EUR-Lex*. [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>> [Accessed 12 September 2020].

¹¹ European Commission - European Commission. 2020. *What Is Personal Data?*. [online] Available at: <https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-personal-data_en> [Accessed 12 September 2020].

people post about them on social media platforms. In all the possibilities, these data might be considered as personal information; however, it is not the subject to trade secret law protection. If you are thinking about copyright law, just let known these protect only creative expression, not factual information.

Until the advent of the GDPR, there is not another protection to the individual, only the regulation by social media policy of privacy and some spare law not specific to the internet. Evidently, social media companies used contract law of terms of service agreements with users to protect business growth interests.

The scope of GDPR is data protection safeguards, although the essential component is the human-centric approach to technology. Therefore, it provides individuals with additional and more substantial rights, increased transparency, and ensures that all those that handle personal data under its scope of application are more accountable and responsible. In the evaluation, after two years of application of GDPR, the European commission explain the digital empowerment and the consequences in this period. My own view, there are four crucial points:

- 1) Increasing of the demand for privacy and security of personal data around the world and how can the GDPR has ensured a high level of protection of personal data and a central role for individuals in all these data spaces while providing the necessary flexibility to accommodate different approaches;
- 2) The adoption of the GDPR has spurred other countries in many regions of the world to follow the model of data protection, and digital regulation adopted, and put the European Community in a position of leader about the regulation of the digital economy;
- 3) Demonstrate the importance of protecting personal data to avoid and prevent manipulation of principal citizens' choices or interference in democratic processes, however, using the flexibility of

data protection and privacy to allow practical solutions (e.g. tracing apps) to be developed while ensuring a high level of protection of personal data;

4) Identify and report future improvements into the law to guarantee regularly updated and adequacy.

Then, as demonstrated in that document that I mentioned above the GDPR is a powerful instrument to provide that every person have better management over their personal data and that these data are processed for an appropriate purpose, in a lawful, fair and transparent way.

As a matter of fact, some of the Social media companies, telecommunication companies and Internet Service Providers complain that governments are overreaching in the investigation of suspects and that investigation might be intruded into people's privacy, as well. In this case, however, that law enforcement authorities often operate to safeguard people and consumer data privacy and security, as a result of this affirmation the law imposition is mandatory to protect data privacy and security on social media.¹²

In relation to social media app or websites, there are threatening your privacy? According to their privacy police no, technologies do not invade privacy. What really threatens your privacy is people with access to technologies that might be invasive to privacy, and at the present time, those people could be you and your friends and family who threat to your own privacy.¹³

Nevertheless, a society in a digital age, it is vital to establish an ethical parameter not to cross the line of privacy of their people around you. However, according to the advance of technologies, we are changing our perceptions and searching for new ways to find better choices that respect people and their rights.

¹² 2012 STAN. TECH. L. REV. 7 <http://stlr.stanford.edu/pdf/determann-socialmed>

¹³ This is true for various tools and technologies, see Quotes About Guns and Other Things That 'Do not Kill People'..., QUOTE/COUNTERQUOTE, <http://www.quotecounterquote.com/2011/03/guns-dont-kill-people-people-kill.html> (last visited April. 4, 2020).

I mentioned some books and articles in this chapter that help me to clarify my ideas. In respect to this article "Social Media Privacy: A Dozen Myths and Fact" I am very grateful, owing to the fact my thought about this dissertation had started after I read that. Obviously, I cannot entirely agree with every single word in the article due to the fact it is from the perspective of US, and so it was written in 2012, and since then the laws and social media had changed.

After that, the second most relevant to me was a book "Social Media Communication: Concepts, Practices, Data, Law and Ethics by Jeremy Harris Lipschultz" It is incredibly easy to read, and the author explains many concepts from the internet and shows how can the perspectives had been changed since the appearing of first social media in the communication, public relation, journalism and law. In this case, the book was very helpful with many concepts and assisted me.

Since I research articles or books to instruct me ethics in a social media context, but it was hard to find some to assist me and when I found one that it helpful usually the article is about ethics in research in the digital age. To illustrate, I can name The ethics of using the internet to collect qualitative research data, by KAREN RODHAM and JEFF GAVIN; Ethical Decision-Making and Internet Research: Recommendations from the AoIR Ethics Working Committee by Annette Markham and Elizabeth Buchanan;

So these articles give me a notion about ethics in the field of research and personal data. Another meaningful article is the document about ethics and data protection by a panel of experts at the request of the European Commission. The aim of raising awareness in the scientific community, and in particular with the beneficiaries of EU research and innovation projects, is still the same as the other that I mentioned above, with the bonus that is according the law, GPDR. Also, the article "Social Media Research: A Guide to Ethics" by Dr. Leanne Townsend and Prof. Claire Wallace from The University of Aberdeen is elucidative in relation to concepts and bring the framework for

ethical research with social media and the concerns with consent, anonymity and risk of harm. Then, I find the paper specific but it is not my objective of study.

I read some articles in Portuguese from Brazil to evaluate the importance of social media and take from another panorama, and the most pertinent was this one: *Proteção De Dados Pessoais Na Internet: A Necessidade De Lei Específica No Ordenamento Jurídico Brasileiro* by Ana Cláudia Hostert. It was easier the reading because it is in my mother language and the goal was to show how Brazil treats the question in relation to internet and privacy and the recent modernization in the legal order with the entry into force of the new general data protection law, inspired by the GDPR.

1.2. Concepts of Alternative Dispute Resolution

So, it is necessary to bring up the knowledge than I accumulate with due to the excellent work of my lecturers about the alternative dispute resolution during these two semesters. In this context, I would like to introduce a notion about alternative dispute resolution (ADR) that will be useful when I related to social media and ethics.

ADR refers to a variety of processes or techniques that helps parties to settle dispute without a trial. These processes are generally confidential, informal, more collaborative and less stressful than traditional court proceedings. ADR is a process in which a neutral third part helps who are involved in a dispute come to an agreement (Shonk, 2019).¹⁴

Nevertheless, the different processes that ADR embrace are Negotiation, Mediation, Arbitration and Conciliation (Fiadjoe, 2015)¹⁵ while the two most common forms of ADR are arbitration and mediation; Negotiation is almost attempted first to resolve a dispute.

¹⁴ shonk, K. (2020). What is Alternative Dispute Resolution? Familiarize yourself with mediation, arbitration, and a hybrid approach using alternative dispute resolution. Retrieved from <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/>

¹⁵ Fiadjoe, A. (2015). *Alternative dispute Resolution: a developing world perspective*. London Routledge, Taylor & Francis Group.

Goldberg (et al 2012)¹⁶ explains that important factor that distinguishes the processes in which a third party is involved is that this neutral party is there to help the disputants to reach their own solution, as in the case of mediation, or to impose a solution as in the case of arbitration made by a tribunal or judge known as arbitrator.

Basically, all the forms to avoid a dispute come to a trial might be ADR, and sincerely, there are many more than Mediation and Arbitration. However, these two are the most relevant in Ireland, and I said that because both had a specific law to regulate this ADR. As you can see, the Arbitration Act 2010, came into force, repealing in their entirety the Arbitration Acts of 1954, 1980 and 1998, moreover, the purpose of the law was to “further and better facilitate the resolution of disputes by arbitration”. Also, the most significant change to arbitration law in Ireland is that the 2010 Act gives the force of law to the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (the Model Law) in respect of both international arbitration and “other arbitration”, i.e., domestic arbitration.¹⁷

Furthermore, there is the Mediation Act 2017, with the goal to facilitate the settlement of disputes by mediation, to specify the principles applicable to mediation, to specify arrangements for mediation as an alternative to the institution of civil proceedings.¹⁸

Considering the above, mediation and arbitration both are realized with the presence of a neutral part, called by Mediator or Arbitrator, respectively. Nevertheless, the first huge difference is about the reach the agreement, while in the mediation the parties building a solution that suits them. In an arbitration, the award is decided by the arbitrator. Another point to consider is the agreement in the mediation might be binding or not, depends on what the parties established in the agreement.

¹⁶ Goldberg, S.B., Sander, F.E.A., Rogers, N.H. and Cole, S.R. (2012). *Dispute Resolution: Negotiation, mediation, arbitration, and others processes*. 6th ed. New York: wolters kluwer.

¹⁷ Bunni, N. (2010). The Arbitration Act 2010 . From: https://www.arbitration-icca.org/media/4/94016562773952/media012974033697450bunni_the_arbitration-act-2010.pdf

¹⁸ Excerpt from the law, Mediation Act 2017. From: <http://www.irishstatutebook.ie/eli/2017/act/27/enacted/en/print>

Whereas in the arbitration the award is binding. Obviously, there are many other peculiar details than these two that I mentioned, but it is the biggest distinction.

1.3. Concept of ethic

The concept of ethics conceived by the philosopher Immanuel Kant is based on the "Ratio", was developed in the book "Fundamentals of Metaphysics of Customs" (1785).

“In this world, and even outside, nothing can be thought of that can be considered good without limitation, except for one thing: a goodwill. (...) Goodwill seems to be an indispensable condition of the very fact that we are worthy of happiness. (...) Goodwill is not good for what it promotes or achieves, for the ability to fulfil any proposed purpose, but only for wanting, that is, in itself ”. (Kant, Foundations of Metaphysics of Customs, pp. 21-23)

Goodwill is that which has unconditional value, that is, it is good in any and all situations and cannot be used to cause harm. Thus, Good Will is represented by the will and manifested by human intention. The meaning of Goodwill is the will of the agent guided solely by his intention to fulfil duty out of duty, and not driven by inclinations or interests.

"To develop the concept of goodwill highly estimable in itself (...) We will face the concept of Duty that contains in itself that of goodwill. (...) I leave out here all actions that are immediately contrary to duty (...), because they do not even pose the question of whether they were practiced out of duty, since they are even in contradiction with it. I also set aside actions that are merely conforming to duty (...) because to this they are led by another tendency. ” (Kant, Foundation of Metaphysics of Customs, pp. 26-27.)

For Kant, people act consonant with the duties and goodwill to follow their ratio, in this way, only actions realized because of the duty has the moral value. Also, all the moral is based on the principle of fundamental ratio, called by “Categorical Imperative” (CI).

Kant characterized the CI as an objective, rationally necessary and unconditional principle that we must always follow despite any natural desires or inclinations we may have to the contrary. All specific moral requirements, according to Kant, are justified by this principle, which means that all immoral actions are irrational because they violate the CI.¹⁹

“The categorical imperative (...) Is this: It acts only according to a maxim so that you can at the same time want it to become universal law. (...) We must be able to want a maxim of our action to become universal law: this is the canon by which we judge it morally in general. Some actions are such that their maxim cannot even be thought of without contradiction as a universal law of nature, let alone one may want it to be such. In others, this internal impossibility is not found, but it is nevertheless impossible to want its maxim to rise to the universality of a law of nature, since such a will would contradict itself”. (Kant, *Foundations of Metaphysics of Customs*, pp. 62, 66.)

To better understand the Kant’s first formulation of the CI, follow their basic outline: formulate a theory that enshrines your rationale for doing as you say. Second, recast the concept as a fundamental rule of nature regulating all rational agents, and to hold that all must act as you yourself propose to act in these circumstances by natural law. Third, in a world regulated by this rule of nature, wonder if your maxim is even conceivable. If it is, then, fourth, ask yourself if, in such a world, you can, or might, be rationally willing to act upon your maxim. If you can, then it is morally appropriate to act.

Another face of CI is the Humanity Formula, in other words, means we should never act in such a way that we treat humanity, whether in ourselves or others, as a means only but always as an end in itself. Kant was the precursor of the principle of "respect" for people, for whatever it is that is important to our humanity.

¹⁹ part of the text of Johnson, Robert and Adam Cureton, "Kant’s Moral Philosophy", *The Stanford Encyclopedia of Philosophy* (Spring 2019 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/spr2019/entries/kant-moral/>.

However, it is important to point out the formula does not rule out using people as means to our ends, despite the fact, there seems something wrong with treating human beings as mere instruments with no value beyond this. This formula only brings the idea of people has autonomy because there are endowed with rationality; that's why people have absolute intrinsic value, called dignity. In opposite this, "Things" only reach a value when they are utilized to achieve an end.

Conforming to Kant, the CI is a fundamental law but that does not mean that it is an external law or that it is part of a legal system. The CI is basically autonomy, because it is the law that goodwill gives itself. In short, by following the IC maxim we will have autonomy of the will and thus we will achieve true freedom.

“Freedom, although it is not a property of the will according to natural laws, is therefore not devoid of law, but rather must be a causality according to immutable laws, even if of a particular kind; otherwise a free will would be absurd. (...) What else can be, then, the freedom of the will but autonomy, that is, the property of the will to be law for itself? But the proposition: "The will is, in all actions, a law for itself", only characterizes the principle of not acting according to any other maxim other than that which can have itself as an object of universal law. This, however, is precisely the formula of the categorical imperative and the principle of morality; therefore, free will and will subject to moral laws are one and the same ”. (Kant, *Rationale for Metaphysics of Customs*, p. 100)

In the Kant point of view, the Categorical Imperative is an objective, unconditional and necessary principle of reason that applies to all rational agents in all circumstances. In order to capture various facets of CI, the philosopher defines two subsidiary concepts: The Universal Principle of Right and The Supreme Principle of the Doctrine of Virtue, in contrast, these ideals justify the more basic obligations of law and of ethics and virtue.

Kant's develops a framework, where the law's responsibilities are narrow and ideal since specific actions are necessary or prohibited. As long as, the roles of ethics and virtue are broad and imperfect because they provide considerable flexibility in how we can choose to fulfil them.

After to design a system of moral duties, the thinker concedes common sense is also needed to decide how these obligations relate to unique situations, because when the moral laws are applied without any exception, then it can cause a disruption in the exact resolution in the laws.

1.3.1 critic of the ethics of Kant

O concept of ethics is based on the perfect duties and these are absolutes, seems not possible in the real world. Because those rules are not absolute and can be in confront of each other. This way, we can consider the moral rules are not absolute in general and in some situations It will be necessary to ponderate when there is a conflict between them.

Even the introduction of the idea of "respect" for people, the philosopher excludes many people of your concept, because those people do not have conscious as a newborn, people with extreme issues psychological. In this way, those people without right would be considered a thing. Definitely, this logic is incompatible with the world plural that we live.

In your theory, Kant excludes the emotional feeling, such compassion or empathy, from all the considerations, just working with the part of rationality. Fortunately, we know that human behaviour does not behave in this form. So, the most analytical person will be considering their own emotional feeling in each decision in their life, although without perception.

2. Research Methodology and Methods

The purpose of this chapter is to describe the Methodology and the methods utilized my dissertation, with respect to that Shona McCombes brought a clear definition about those terms, pursuant her defines "Methodology refers to the overarching strategy and rationale of your research

project. It involves studying the methods used in your field and the theories or principles behind them, in order to develop an approach that matches your objectives. And methods are the specific tools and procedures you use to collect and analyze data, for example, experiments, surveys, and statistical tests."²⁰

The first step of my research was to identify and refine my research question and took some time to get an idea. However, this process of generating a topic that is significant to a specific field or broader application was very deductive to me. I had already chosen something related to social media and evidently the field of alternative dispute resolution, my studying area in this master degree.

Besides, it is important to consider the question of the research aims to answer is exploring will determine this aspect of relevance. About this, Saunders et al (2019, P.42) outline that "one of the key criteria of your research success will be whether you develop a set of conclusion from data you collected. The extent to which you can do that will be determined largely by the clarity with which you have posed your research question."

In my case has the following research question that is understood to be coherent and meaningful to Alternative Dispute Resolution and Social media, as a result of in the contemporary that people have been using the social media on a daily basis. As a result of my idea, I realize that I would like to write about the analysis of the ramifications the social media in my object of study, in this case, alternative dispute resolution.

In an attempt to refine my search, I take axiology bias referring to the role of values and ethics in relation to data from social media in the alternative dispute resolution, without excluding the parameter created by the General Internet Data (GDPR) used by the EU, including the Republic of

²⁰ McCombes, S. How to write a research methodology. From: <https://www.scribbr.com/dissertation/methodology/>

Ireland, this is the legal norm in use and should, therefore, be used in my studies and analysis as a guideline.

Subsequently, the next phase was made a quick check about the existence of similar research on the internet and observation the lack of respected work and articles, therefore, I observe that the topic is not covered because it is relatively new and I glimpsed the opportunity to produce some piece of work interesting about.

Taking the mentioned above into consideration, I choose this topic due to the fact that it is new, interesting and pretty important to the relevant discussion of ethics and the ramifications in Information Technology. As well It will be necessary for the development of new specialists in the area of alternative dispute resolution.

After that, another phase was to start the collection of articles and books related to the theme, and it is extremely important to contribute to a better understanding about the new subjects in evidence and corroborate to an extensive literature review, in my case this includes, study the concept of ethics by Philosopher Kant and the concepts from IT. It is valid to point that, in the field of research in social science requires the collection of data in order to understand a phenomenon, and will depend on the state of existing knowledge of the topic area.

Afterwards, it was the time to design my methodological approach and context with a description of my methods of data collection. In general, many humanities area dissertations choose the approach theoretical with the objective to provide a detailed justification for many necessary concepts involved with the framework. In my study, also it is no different, I organize to do that through literature or bibliographical review, a study of the case from the legislation.

Basically, to conceive a theoretical framework with the concepts than I needed to my study, it was difficult because it is not anything in the literature that is specific. So, to demonstrate an understanding of theories and concepts that are relevant to the topic of research, I had utilized many

papers that have some point in common with my subject or the broader fields of knowledge that subject.

In line with, I reviewed course readings and pertinent research literature for theories that are relevant to the research problem that has been investigating. The selection of a theory should depend on its appropriateness, ease of application, and explanatory power.

One of my concerns with my research is the degree to which you want to interpret the influence of your own ideals and beliefs as a positive thing on your studies because in some point will face this axiological choice and I hope that I deal with the balance in relation to my own values and the concepts that are researching.

As Heron (1996) argues, that our values are the guiding reason for all human action and that while it is inevitable that you will incorporate your values during the process, it is crucially important that you explicitly recognise and reflect on these as you conduct and write up your research. Choosing one topic rather than another suggests that you think one of the topics is more important.

Another point that is worth to consider is the methodological choice between qualitative and quantitative data, the main difference respectively is one takes the form of vocabulary or image-based explanations, while quantitative input takes the form of statistics. In general, qualitative knowledge is richer and typically focused on a subjective, interpretative viewpoint, are often more flexible.²¹

When it comes to my dissertation, the way chosen was the qualitative data, based on semi-structured interviews with the experts in the area or people who work with ADR, with the aim understanding about the ethics of using of data from social media in the alternatives disputes resolution. Due to the deep of the examined condition and, owing to time limitations, the number of people to participate in the interviews was a limited sample of participants.

²¹ Heron, J. (1996) *Co-operative Inquiry: Research into the Human Condition*. London: Sage.

As I expressed my concern because this approach is less regulated and more interpretive, I concentrated on my role as a researcher to taking into account to my experience may have impacted the outcomes and in then take more time-consuming than quantitative analysis.

In relation to the design of the interviews, my first approach was decided on the group of people that I would like to interview to collect data. My idea was to select mediators to ask them about the impact of social media and GDPR. Although my research includes to other ADR, my idea about mediators was clear due to accessibility to them, in fact, I thought in using my lecturers to start and deep it.

Due to the fact that interviews allow access to abundant information and more accurate according to the role of mediator, my planning was worked to be a passive observer, with the exclusive role to compile the data and do not interfere with my speculation.

There are many types of qualitative interviews, such as structured interviews, questionnaires and semi-structured interviews. Then, I read about these types to understand which will be better to reach my aim and design my interview.

In relation to structured interviews enable the interviewer to ask each respondent the same questions in the same way. A tightly structured schedule of questions is used, very much like a questionnaire. The questions contained in the questionnaire will have been planned in advance, sometimes with the help of a pilot study to refine the questions. (Mathers, Nigel; Fox, Nick and Hunn, Amanda. 1998)

With respect of semi-structured interviews involve a series of open-ended questions based on the topic areas the researcher wants to cover. The open-ended nature of the question defines the topic under investigation but provides opportunities for both interviewer and interviewee to discuss some topics in more detail. In a semi-structured interview, the interviewer also has the freedom to probe

the interviewee to elaborate on the original response or to follow a line of inquiry introduced by the interviewee. (Mathers, Nigel; Fox, Nick and Hunn, Amanda. 1998)²²

From these differences, I designed my interview as a questionnaire that way all the interviewee would answer the same question. However, my type of question is an open question, so gave the respondent opportunity to introduce more than fact connected with professional practice, but also their opinion about the topic. In order to facilitate the mediators to answer, I provided a brief introduction of my point of research so this way I encourage the interviewee to consider the question further.

Therefore, the planning of those interviews was an extensive preparation and because of the force majeure caused by a pandemic my idea about how I conducted the consultation had to been changed in different aspects. The biggest modification was in the way to conduct the interviews, from presential to online. The procedure I adapted was worked in this manner, I send the e-mail to mediators participants and conforming they answer me I utilized only written answer in anonimouys.

In the context of my online interviews, after discussion with my tutor I conceived the questionnaire below to my participants:

1. What is your opinion on the use of photos from social media in a mediation?
2. Do you think the GDPR is enough to protect the personal data from social media within conflict resolution?
3. In your opinion, does the person who posted the photo need to give express consent to use the photo in the event of mediation? Justify your answer.

²² Mathers, Nigel; Fox, Nick and Hunn, Amanda. Trent Focus for Research and Development in Primary Health Care: Using Interviews in a Research Project. Trent Focus, 1998

4. And in other methods of conflict resolution, such as negotiation and arbitration, do you think it is ethical to use photos and information from social networks?
5. In your opinion, is express consent necessary for the use of photos and information from social networks under negotiation or arbitration?
6. Regarding the express consent for the use of data from social networks, do you believe that this can be interpreted as producing evidence against you?

Unfortunately, due to the circumstance the adherence to my questionnaire was lower than I expected and obviously, this pandemic crisis alterate my results and my number of participants. Evidently, it is more effective to booked an hour to talk with the interviewee than just exchange couple of e-mails, sadly, to complete my data was necessary to utilize secondary data as well.

It is easy to see that the secondary data is information collected by another researcher in some point of the past and it is not directly involved to my study, but there is an advantage as the completion time is shorter.

For this purpose, I searched and collected material from data Protection Comission in Republic of Ireland as Annual report from 2018 and 2019, as well the report of data breach from the first year of GDPR in force, plus the guideline with the targeting of social media users produced by European Data Protection Board to analyse and present the evidence in the next chapter.

One important matter is to outline ethical consideration relative to the use of secondary data to avoiding the plagiarism. In order to present the scope of my study, for all kind of information that I used I made the reference or footnote to indicate my sources.

3. Presentation of the data

Referring to my previous chapter, the data I present in this stage there are different origins because the extenuating circumstances do not possible to present a deep understanding from my original

information collected to answer the research through the interviews realized by e-mails. Along these lines, to complete my search, it was necessary to use secondary data that means material that has already been collected by other researchers, in this case, a government report, previous articles and news from respected sources. Then, it is possible to conclude that it is mixed-methods research, that use both qualitative and quantitative input collection and analysis methods to explain the research question.

To a better comprehension of my data, I divide in to sections, on the first, I will exhibit the information I collected from my own exploration. In the second part, I will disclose the information I could get from the other sources.

3.1. Primary data

My plan when I started the study was using qualitative data to explore ideas, thoughts and meanings related to alternative dispute resolution and the social media. Therefore, I designed the idea of the interviews to a specific group of individuals that will be called a sample, in other words, specific sample, who was people that work with ADR, with the purpose to get the diverse viewpoint between negotiators, arbitrators and mediators.

However, this type of research requires an amount of time from that participants and mine as well, that would be impossible to realize a well-done job only 12 weeks due to big large sample of participants that I planned. So, I necessitated refining my objectives to do achieve the goal of my study and complete the search in time, even so, I thought the elegant solution to cooperate with my research, select mediators to answer my questionnaire.

There is more the one good reason for this choice, the mediators are more accessible than arbitrators, and due to the this master's degree, we had contact with at least two of them during the class semester. Another reason, there is possible to get connected with some of them by simple e-mail and observe details of their formation in the website of the institute of mediation in Ireland.

Thus, I used as criteria years of experience and from different counties in Ireland to attract the most various points of view inside the same context and obviously who put a form of communication available. After a quick selection, I could get the emails of 45 mediators, the next point was to the preparation of the interview, for example, to check the necessity of ethical approval by the committee.

In relation to ethical issues to my collection of primary data in the way of the interview online, there were two main concerns, (1) obtaining the consent of participants and (2) confidentiality and anonymity of online participants.

Thereupon, with respect to the anonymity of the online participants, According to the expert RODHAM, K. and GAVIN, J. (2006) "this type of interview can offer a suitable alternative for those respondents who require greater reassurance of confidentiality and anonymity, or who feel intimidated by the electronic presence of others in focus groups."²³

Regarding obtaining a person's informed consent, in the first approach by email, came to a brief explanation about the aims of the research and that is being proposed and is clear about what will happen to the research findings just be used to my dissertation and make sure for the participant must also be made aware that they can withdraw from the research at any time. The explicit consent is given by answer on a one-to-one basis through an exchange of e-mails.

My strategy was to send to a block of fifteen mediators, on a one-to-one basis, an e-mail that contains my brief explanation and the questionnaire and inviting them to collaborate with my consult. I proposed that way, in case I had a massive answered from the group, I would decrease the reach of the second and third groups not to be extensive and massive. Instead of the many

²³ RODHAM, K. and GAVIN, J., The ethics of using the internet to collect qualitative research data. Research Ethics Review (2006) Vol 2, No 3, 92–97. The Association of Research Ethics Committees 2006.

feedbacks expected, my first attempted was a failure, none in that group answer me in a significant period of time.

On my second attempted, my feedback was a little better in comparison with the first, and I got 5% of answering of number total of participants, in other words, two mediators reply to me back. However, the response was negative to participate in my study, and both alleged that they do not work with mediation to be a part of in research. Despite the fact that I do not get any meaningful result, it was a hope that I get better and persisted in my last attempt.

In the third attempt, I achieved the same amount of replies, it means, 5% of answering of number total of participants or two mediators reply to me back. And my results were a bit diverse, so one of the mediators wrote the following message:

"I do not see a relevant point in your research due to the fact it is not possible to use this data because of GDPR in force, and I never saw anyone use social media for a mediation. Best luck with the other types of ADR."

With respect to my second reply, the mediator answered me a succinct, however I transcribed below their feedback.

1. What is your opinion on the use of photos from social media in a mediation?

A: I do not think it is recommended to a mediator because of the GDPR and their ramifications. But one of the parties might bring some piece of information derivate from social media. Hence, it is important to discuss with the parties involved if they would consider that information relevant or not for achieving an agreement.

2. Do you think the GDPR is enough to protect the personal data from social media within conflict resolution?

A: The GDPR is very protective in relation to personal data and in my work experience none conflict emerged from social media in a mediation.

3. In your opinion, does the person who posted the photo need to give express consent to use the photo in the event of mediation? Justify your answer.

A: in case some party bring this kind of information to mediation, to establish a welcoming atmosphere and avoid more conflict, I should ask for the consent to the party. Because the idea of mediation it is to create a solution to benefit both parties and these act might unbalance the relation and difficult the communication of the parties.

4. And in other methods of conflict resolution, such as negotiation and arbitration, do you think it is ethical to use photos and information from social networks?

A: I can not opine due to lack of experience with those methods of ADR.

5. In your opinion, is express consent necessary for the use of photos and information from social networks under negotiation or arbitration?

A: In my opinion, I understand the possibility to use the photos from social media as proof, because it is viable to use in a lawsuit. Thus, for an analogy, it is conceivable to apply the same idea to arbitration, for example.

6. Regarding the express consent for the use of data from social networks, do you believe that this can be interpreted as producing evidence against you? To be honest, I have never think about the theme, but in my opinion, depends on the kind of situation that is involved, for example, in a witness of a crime is allowed to use without the consent, due to the biggest interests. I do not think the question has only one answer; in this situation, it is better to evaluate case by case.

I hoped more responses like this to analyse and present my findings to my research, however, due to time only twelve weeks to produce was not feasible to spend more time in more attempt and maybe not achieve the results that I expected. So, after a brief discussion with my tutor, I accepted the fact that I would complement the collect the data process with secondary data.

3.2. Secondary data

As mentioned before, due to pandemic and the low adherence in my questionnaire was necessary to adjust my process of collection of data to make a deep interpretation, I opted to secondary data. In my case, my main concern was about the credibility of the source and as consequence it could be affecting my outcome. That's why, I decide to reliable sources as official information and from a trustworthy sources.

So, from the annual report from Data Protection Commission 2018, official information from the Irish Government, it is glean the idea about more worried about personal data in the digital ambiance, as:

"The phenomenon that is the General Data Protection Regulation (GDPR) has demonstrated one thing above all else: people's interest in and appetite for understanding and controlling use of their personal data is anything but a reflection of apathy and fatalism. While a series of Eurobarometer surveys* in recent years have catalogued concerns on the part of the public about uses of their data, it is the rise in the number of complaints and queries to data protection authorities across the EU since 25 May 2018 that demonstrates a new level of mobilisation to action on the part of individuals to tackle what they see as misuse or failure to adequately explain what is being done with their data." (Data Protection Commission 2018, Annual report, Page 5)

In relation to the multinational that base on Ireland and the concerns of when the GDPR came to in force, like:

"Equally, Ireland is home to many multinational internet and tech companies, and in 2018 the DPC opened inquiries into data-processing activities of Facebook, Apple, Twitter, LinkedIn, WhatsApp and Instagram, looking at issues ranging from large-scale data breaches to legal bases for processing to transparent presentation to users.

All these inquiries should reach the decision and adjudication stage later this year, and it's our intention that the analysis and conclusions in the context of those inquiries will provide precedents

for better implementation of the principles of the GDPR across key aspects of internet and ad tech services. There are undoubtedly areas of risk to be examined in sectors beyond the free internet services but initial complaints and breaches have focused the DPC in this area and warrant attention in light of the hundreds of millions of users implicated.” (Data Protection Commission 2018, Annual report, Page 6)

The new functions of DPC due to the GDPR, and the main related with personal data and breaches, such a:

"The DPC is the national independent authority in Ireland responsible for upholding the fundamental right of individuals in the European Union (EU) to have their personal data protected. Accordingly, the DPC is the Irish supervisory authority responsible for monitoring the application of the GDPR (Regulation (EU) 2016/679). The core functions of the DPC, under the GDPR and the Data Protection Act 2018, which gives further effect to the GDPR in Ireland, include:

- handling complaints from individuals in relation to the potential infringement of their data protection rights;
- conducting inquiries and investigations regarding potential infringements of data protection legislation;” (Data Protection Commission 2018, Annual report, Page 9)

Another important document is the Guidelines 8/2020 on the targeting of social media users produced by The European Data Protection Board (EDPB), their focus are the targeting of marketing using the personal data from social media. However, it is possible to quote relevant parts significant about characteristics of social media, for example:

"A significant development in the online environment over the past decade has been the rise of social media. More and more individuals use social media to stay in touch with family and friends, to engage in professional networking or to connect around shared interests and ideas. For the purposes of these guidelines, social media are understood as online platforms that enable the development of networks and communities of users, among which information and content is

shared Key characteristics of social media include the ability for individuals to register in order to create “accounts” or “profiles” for themselves, to interact with one another by sharing user-generated or other content and to develop connections and networks with other users.” (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 3)

Also, this Guideline express concern about using data and the soar of risk to the fundamental rights and freedoms of individuals, as:

“The combination and analysis of data originating from different sources, together with the potentially sensitive nature of personal data processed in the context of social media, creates risks to the fundamental rights and freedoms of individuals. From a data protection perspective, many risks relate to the possible lack of transparency and user control. For the individuals concerned, the underlying processing of personal data which results in the delivery of a targeted message is often opaque. Moreover, it may involve unanticipated or undesired uses of personal data, which raise questions not only concerning data protection law, but also in relation to other fundamental rights and freedoms. Recently, social media targeting has gained increased public interest and regulatory scrutiny in the context of democratic decision making and electoral processes.” (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 4)

Moreover, the guideline reinforce the importance of GDPR in the mitigating any risks to the fundamental rights, like:

“The GDPR underlines the importance of properly evaluating and mitigating any risks to the rights and freedoms of individuals resulting from the processing of personal data. The mechanisms that can be used to target social media users, as well as the underlying processing activities that enable targeting, may pose significant risks. These guidelines do not seek to provide an exhaustive account of the possible risks to the rights and freedoms of individuals. Nonetheless, the EDPB considers it important to point out certain types of risks and to provide a number of examples how they may

manifest themselves.” (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page)

The guideline talks about how dangerous can be the creation of a profile due to disclosure of some personal data that be manipulated from the social media provider, as:

"Individuals may actively disclose a great deal of information about themselves when making use of social media. The creation of a social media account (or “profile”) involves disclosure of a number of attributes, which may include name, date of birth, gender, place of residence, language, etc. Depending on the nature of the social media platform, users may include additional information such as relationship status, interests or current employment. Personal data provided by social media users can be used by the social media provider to develop criteria, which enables the targeter to address specific messages at the users of the social media." (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 13)

The Guideline reveals the importance of the concept of consent brought by GDPR for the user in the treatment of personal data,

"Generally speaking, there are two legal bases which could theoretically justify the processing that supports the targeting of social media users: data subject’s consent (Article 6(1)(a) GDPR) or legitimate interests (Article 6(1)(f) GDPR)." (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 14/15)

"Consent (Article 6(1)(a) GDPR) could be envisaged, provided that all the requirements for valid consent are met. The EDPB recalls that obtaining consent also does not negate or in any way diminish the controller’s obligations to observe the principles of processing enshrined in the GDPR, especially Article 5 with regard to fairness, necessity and proportionality, as well as data quality. Even if the processing of personal data is based on consent of the data subject, this would not

legitimize targeting which is disproportionate or unfair." (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 16)

"To be valid, the consent collected for the processing needs to fulfil the conditions laid out in Articles 4(11) and 7 GDPR. Generally speaking, consent can only be an appropriate legal basis if a data subject is offered control and genuine choice. If consent is bundled up as a non-negotiable part of terms and conditions, it is presumed not to have been freely given. Consent must also be specific, informed and unambiguous and the data subject must be able to refuse or withdraw consent without detriment." (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 16)

"To be valid, the consent collected for the implementation of tracking technologies needs to fulfil the conditions laid out in Article 7 GDPR. For instance, consent is not validly constituted if the use of cookies is permitted by way of a checkbox pre-ticked by the service provider, which the user must deselect to refuse his or her consent." (Guidelines 8/2020 on the targeting of social media users produced by EDPB, page 21)

On top of that, the article "Social media, privacy and evidence" publicized by THE BAR REVIEW: Volume 25, number 1, from February 2020 written by Michael O'Doherty, is an excellent and it brings a point of view about the uses of data from social media in courts, considering the issue of privacy, confidentiality and the position of the court concerning those issues.

At first, the author enumerates the hypothesis to how can privacy works in social media, as access public, to their friends and more extensive to friends of your friends.

“ In an increasing number of cases, however, the material is obtained from social media, most commonly the claimant's own account. Such material may exist in one of three circumstances:

- it may be publicly available by being visible on the public part of the person's social media profile;

- if a photograph was taken by someone else,¹ or includes someone else, then that third party may well have uploaded it to their own social media account; or,
- it may be in the ‘private’ section of the person’s social media account, and theoretically unavailable other than to their social media ‘friends’.” (O’Doherty, M., 2020)

Secondly, he talks about the right to privacy and indicates the differences between privacy and confidentiality for social media users.

"A preliminary issue, central to much of the discussion on this subject, is the right to privacy in this jurisdiction. While the right attracts Constitutional protection under Article 40.3.1, it is not an unqualified right. This is especially true when privacy is claimed so as to conceal behaviour of an unlawful nature. Most significant of all, perhaps, is that privacy as a legal right, and the ‘privacy’ settings of a social media account, are two entirely different concepts and, as set out in the case law, they should not be confused with each other.

Alternatively, confidentiality may also be advanced as a bar to such material being adduced as evidence. It does not exist as a right in the manner of privilege, for example, but instead will be recognised by the court only where the interests of justice require it.

If we accept a broad definition of confidentiality to be that the person in possession of the information did not intend it to be broadcast publicly, such a claim is naturally problematic in respect of a publication on social media. Even if concealed behind privacy settings, it is nonetheless made available to possibly hundreds of Facebook ‘friends’, and so it is difficult to assert that it could be considered to possess the requisite degree of confidentiality.” (O’Doherty, M., 2020)

Also, he explains the admissibility of photographic evidence from publicly accessible social media profiles or concealed by a user’s privacy settings, of course, it was for specific cases of personal injuries actions.

"The initial question of admissibility can be disposed of relatively swiftly. For such evidence to be admissible, it must firstly be relevant, and there would seem little question but that material that potentially contradicts the extent of injuries suffered by a claimant would meet this test. Section 45 of the Courts and Court Officers Act 1995 requires parties to personal injuries actions to disclose certain specified categories of information, including copies of expert reports and the names of witnesses, but does not require them to disclose evidence from social media. There would seem, therefore, to be no practical bar to a defendant who is in possession of such material simply confronting a claimant with it during cross-examination."(O'Doherty, M., 2020)

"In a rare published decision on the subject, albeit very briefly, the High Court in *Gervin v Motor Insurers Bureau of Ireland* [2017] IEHC 286, rejected the complainant's submission that photographs on her Facebook page, which contradicted her testimony as to the extent of her injuries, had been obtained in breach of her privacy. The Court rejected this for the simple reason that she did not have a privacy restriction on her Facebook account at the relevant time. It is unclear whether the court would have held that her privacy would have been breached if such a privacy restriction had been in place." (O'Doherty, M., 2020)

With respect of the admissibility of material concealed by a user's privacy settings is more intricate.

"In these circumstances, the party seeking to rely on the material is faced with one of two choices. They may apply to the court for an order for discovery of material that they believe to be hidden behind the privacy settings. This issue is considered below. Alternatively, such party may already have obtained the material either via a third party who was a 'friend' of the claimant, or by requesting that they be added as a 'friend' of the party whose material they are seeking and, subject to them being so added, the material then becoming available to them." (O'Doherty, M., 2020)

According to the author, there is a lack of jurisprudential, however, there is a decision Workplace Relations Commission (WRC) in case *A Sales Assistant versus A Grocery Retailer*, the adjudicator

officer decided that conversations in the group only for union members was not private, because the members posted on the worldwide web.

In another case of the court, *Martin and ors v Gabriele Giambrone P/A Giambrone and Law* [2013] NIQB 48, the defendant applied to have the evidence, comments made by the defendant on his Facebook page, was excluded on the basis that the comments were visible only to his Facebook 'friends'. "In refusing the application, the Court gave little credence to the belief that such postings on social media could be considered confidential, and made a general statement about the dangers of posting material on social media that might be detrimental to any arguments that person might seek to advance in court: "I should say that anyone who uses Facebook does so at his or her peril. There is no guarantee that any comments posted to be viewed by friends will only be seen by those friends. Furthermore, it is difficult to see how information can remain confidential if a Facebook user shares it with all his friends and yet no control is the only visible element on the public part of the claimant's placed on the further dissemination of that information by those friends" (O'Doherty, M., 2020)

Besides, the author demonstrates that the fact is the jurisdiction seems not to enquire as to the provenance of such material generally. Still, some behaviours could be considered unethical. Maybe the evidence could be not admitted by the courts, illustrate a 'friend request' designed purely to gain access to the private section of the claimant's social media accounts or the creation of a fake account to be added as a 'friend' to gain access to the claimant's account.

In your conclusion, the Michael O'Doherty summarize the topics:

"Given the fact that privacy is a constitutionally protected right in this jurisdiction, it is perhaps surprising that the above issues remain unventilated here. It may well be that a superior court will pass judgment and find that the interests of justice clearly dictate that such material, when it appears to contradict sworn testimony, cannot be protected by any claims to privacy. The attitude of the

WRC in *A Sales Assistant v A Grocery Retailer*, and the common attitude of the courts in other jurisdictions, seems to be that a claimant gives up the right to assert any privacy over material that is voluntarily placed on their social media account. And in those circumstances, the manner in which the opposing party may have obtained such material is of no great concern to the court. But the question of whether discovery of the private section of a claimant's Facebook account would be permitted remains an unanswered one, as would the court's attitude towards material that has been obtained by the opposing party in a manner that may be less than ethical. It is surely only a matter of time before these issues will be determined by an Irish court."

Additionally, I found two news from the newspaper Irish Times, a respectable source of communication in Ireland. Both of them bring a situation related to social media and exposing the different approaches in each condition.

At the eldest published in 2014, the headline was 'Social media now a valuable source of evidence in criminal trials'²⁴ and bring the fact that the barrister that utilize that data from social media as a piece of evidence. That information have been using as a tool by the defence, but also get the attention of the prosecutors to be a helpful instrument.

"Social media sites such as Facebook are simply another means of communicating, so it is no surprise they have become such a valuable source of evidence in criminal trials. However, the public and permanent nature of the communication makes it much more useful in court than a phone conversation."

According to the news, it is each more the soaring use of social media as a defence tool in criminal trials, becoming the social media an inexhaustible source of evidence, not only to crimes but any

²⁴ The Irish Times. 2014. *Social Media Now A Valuable Source Of Evidence In Criminal Trials*. [online] Available at: <<https://www.irishtimes.com/news/crime-and-law/social-media-now-a-valuable-source-of-evidence-in-criminal-trials-1.1874748>> [Accessed 20 October 2020].

other legal subject. In this way, the Police also had to change and created a niche to an expert on technology, for that they invested in digital forensics.

Another valuable point in the news, it is of these data is not from “hacking” accounts, but the normal access of the accounts “Unless the complainant gives their permission to access their account directly, only the information publically available to any user can be accessed.” But in certain cases " It is open for investigators to obtain a court order to compel Facebook to hand over private data, but it is a difficult process. The giant of social media is renowned for being reluctant to hand over information and will often reject orders it considers “overly broad”.

At the second publication from 2019, the headline was "Sharing videos on social media ‘not the way to report a crime’"²⁵. So, basically, it is a solicitation from Garda to not expose people who committed infractions on social media. Despite the fact, The Garda is not responsible for the data protection. They still concern about other forms of crime as libel cases.

"Social media is not the appropriate forum for deciding whether or not someone is guilty of any offence. This is a matter for the court," Garda Headquarters said in reply to queries from The Irish Times."

The piece of journalism reinforces that an accused person has the right to be due process and also to their good name, it was for a court to decide on innocence or guilt and not social media users.

All the material obtained in this chapter will be analyzed and discussed in the following chapters.

4. Data Analysis

The objective of this chapter is to analyze the data presented in the previous as well as the interpretation of the qualitative data collected. Along these lines, the findings had a function to help to understand more thoroughly the range and scope of the main topic reached in the investigation.

²⁵ The Irish Times. 2019. *Sharing Videos On Social Media ‘Not The Way To Report Crime’ – Garda*. [online] Available at: <<https://www.irishtimes.com/news/crime-and-law/sharing-videos-on-social-media-not-the-way-to-report-crime-garda-1.3775031>> [Accessed 20 October 2020].

Before starting to analyse the primary data from the interview, I would like to show the methods that I used to analyze data. As mentioned before, I am using two different types of data in this study, primary data from the interview and secondary data from official documents. So, in this study to evaluate the information, the narrative Analysis that is defined as research is a set of theoretical methods that examine multiple facets of the narrative. It is important to find which is the researcher interests to set out the purpose is to analyse how the narrative is constructed.

The analyse could be concentrated in parts of the text or be analysed as a whole, depends on the nature of the narrative interpreted, what constitutes varies considerably. These can be mixed in operation, based on the question and intent of your analysis and the quality of the data.

In my case, the best option for my study is to create a story from pieces of knowledge obtained from numerous sources, such as various records or research interviews. Even so, it is significant to conserve the information within their narrated context to maintain the consecutive and basic elements of each case.

4.1. Primary Data Analysis

With respect to the analysis of the interviews, there are only two points of view to be considered. Unfortunately, it is not possible to present consistent data from the interview due to a small sample of answers I had got. And the first one not even answers the questionnaire, although in your succinct response is it possible to observe some topic about mediation, GDPR and data from social media in a relevant way. However, it is possible to make some conclusion about the point present by my two respondent.

According to that mediator, who did not answer the questionnaire, just expressed his opinion about the impossibility of the use of data taken from social networks due to the GDPR law. So, what I can understand is the GDPR could impose some restriction on the mediator in relation to the use of data

from social media in a mediation. Although that mediator there no mentioned about the specific point in the GDPR that forbid the use of data from social media.

From this point, in a short analysis of GDPR, it is possible to conclude that law to impose some restrictions on the handling personal data for all the economic operators, in the all level of enterprises to provide the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, excepting for the domestic use, with no relation to a professional or commercial activity.

Another point that could be considered one of the impediment is the consent, the parties involved in the mediation would consent the mediator to have access to their social media, and this imposition is derived of the fact the mediator is a third neutral part with a contractual link with the parties in a mediation. Thus, it could be considered an economic and that it causes a high level to precaution on the handling of personal data.

I start to introduce my finding from the answers of the other participant of the questionnaire, who answer the question. In his first answer, he confirms that the mediator is not participate with the purpose to bring information from social media as the first investigation. However, he brought a new hypothesis whether one of the parties bring information derivate from social media, and moreover, put on discussion the idea of consent of the parties.

Again, the respondent was not specific about the type of restrictions are included in the GDPR to avoid the use the data from social media in a mediation. Whereas he induces two new points, the idea that the party could utilize data from social media and the consent from the parties involved to use this type of material.

It seems the consent has a relevant role in this thematic of using social media in alternative dispute resolution, and the parties have the option to express this kind of intervention is pretty positive. Evidently, there is a hiatus that permit the uses of a piece of information without consent in the law. In relation to the performance of the GDPR, he seems satisfied with the potential protector of the law and from his experience, none conflict emerged from social media in a mediation.

About the consent from the person who posted on social media, he agreed to ask for the consent of the party. Additionally, he told about the nature of mediation where people are there to get an agreement, thus any details to provoke a conflict maybe avoid. Mediation is a non-adversarial, facilitative mechanism where a third-neutral party works to support the parties in reaching a settlement.

Concerning other alternative dispute resolution relative to question number four, the participant opted not to give his opinion.

Regarding express consent necessary for the use of data from social networks in other types of ADR, he believes in the possibility of using the photos from social media as proof, because it is viable to use in a lawsuit. So, because of that, he trusts in the possibility to use in the arbitration for analogy.

With reference to the express consent for the use of data from social networks and the prospect of being interpreted as evidence against yourself, he demonstrated not had an opinion, also showed the idea about the right of privacy it is not absolute and can be ponderated if another principle is questioned.

The elements mentioned by the mediator interviewed are interesting and coherent with an actual dynamic of the process of mediation. I believe that alternative dispute resolution will be influenced by social media, and the process and collection of information will be adapted, as like the mode of making suffered alteration along the time.

During this study, I got convinced the use of analogy for the use of data from social media is a fine and elegant solution to the development of technology. Another point is worth to consider the right to privacy is not absolute and is necessary a balance between it and freedom, autonomy, free speech and information and other civil rights.

The component of ethics was not cited by the participants, but I can understand the idea is implicit. When the participants respect the confidentiality of the process or he suggests about the consent about the use of data from Social media, it demonstrates respect for the right of the other, considering a person of rights.

4.2. Secondary Data Analysis

I start by analyzing the secondary data and follow the order in which the data were presented, so I start with the Data Protection Department's annual report for the year 2018. With regard to the increasing interest of people on the subject of data protection, I interpret that in an increasingly digital world, the concern with personal data and its possible use by third parties is extremely beneficial to individuals, demonstrating proactivity.

The consequence of this behaviour is the increase in the number of complaints and grievances registered by the data protection area, due to the fear of exposure and the possibility of an invasion of privacy.

Another data raised by the DPC is the interest of technology companies in adapting to the new legal framework in 2018, including the giant and most popular of social networks, Facebook and consequently Instagram, both by Mark Zuckerberg. It should be noted that Ireland is the country that concentrates this technological pole, which increases the accountability of the supervisory structure in terms of data protection.

With the advent of the GDPR Law in 2018, it was necessary to change the structure of the Data Protection Commission, for which it gained prominence with regard to the defense of fundamental rights related to personal data, this role came with an accumulation of new functions.

Among the new functions, the most relevant are those dealing with the responsibility of this body in dealing with possible violations and in conducting investigations for possible penalty application in verified cases of data protection violation.

It is worth mentioning that although it does not specifically mention social networks, they are undoubtedly included in the regulation. Proven by Facebook's interest in adapting the requirements established by GDPR for the European market.

The second text is the Social Media Guideline, in which the focus is on using the social network for marketing and targeted ads. With the growing increase in the use of social networks in all fields and also the need to monetize their use, which has been occurring an increase in policies for personalized ads according to the preferences made available by users. This topic is fascinating and brings some points that may be relevant to social networks that will be used as a source in my study.

The guide starts with the evolution of the social network and its purpose, which is to keep in touch with family and friends, networking and also share ideas and interests with your contacts. This cut is perfect because it demonstrates that the interaction can be within the circle of friends or contacts, or on a worldwide scale with all users of that social network.

My interest in this study is the availability of personal data by social network users and the use of data made available in the form of posting by their contacts. Spite of the social media purpose is beneficial, and using might have an offensive potential due to the cut of information that your contacts visualize it depending on the setting of your privacy.

In other passage, the guideline reinforces the importance of GDPR about the protection of data of the users of social media against the progress of advertising. In my observation, it is relevant that

GDPR is the mechanism that defends the user against the intervention of the third party, as your contact or a generic user that can access the data you posted.

In another part of the text cited, the highlight is the concept of consent present in the GDPR for utilization of social media data by advertisers. The observation significant is the user always needs to authorize the advertisers to using their data. My focus for my study is the utilization of social media data by third, does not matter if they are your friends or generic user from social media, is indispensable the express consent of the user.

The next article "social media, privacy and evidence" is more than just a source is an inspiration, as well. And in my view, it is an obligatory reading to anyone who has interests in the relation of social media data and litigation. The spotlight is the uses of social media data as evidence in a specific type of lawsuit, personal injuries.

However, every single observation is brilliant and it is completely possible to analyze the information that he provides and makes a link with the theme what I propose here. So, it understands the opportunity of extending the limits for alternative dispute resolution.

Although of the brilliance of the insights, the author brings some topics that neither were judged for the Irish Court and in this way, it is not possible to get certain about the understanding of the Justice. The hypothesis that is waiting for a precedent is about the eligibility of the content hidden by the privacy settings of a device by the users.

Furthermore, the author proposes two solutions the first one is to get authorization before the court to the discovery of any material that has been hidden. In like manner, the second proposition is a little bit more complex, because it involves an ethical impasse. The suggestion would be requesting a friendship at social media to get access or ask someone else to do this. Or maybe someone with custody of the private material provides for you access it; however, it is very tricky and could cross

the line between ethical and privacy. As mentioned, its possibilities have not been considered by this jurisdiction yet.

A recent decision of the Workplace Relations Commission (WRC) is fascinating because the adjudicator considered the message of the closed-group of union members is not private. After all, it is posted on the worldwide web. It might be one of the direction as the court will take, but until the verdict still controversial. Another topic the Court never discussed the provenance of such material or discussed the authenticity of the material put be in question by the claimant.

One alternative solution occurred in the case *Barnes v CUS Nashville LLC* No.3:09-cv-00764 (M.D. Tenn) (June 3, 2010), the trial judge frustrated at with the delay in progressing of the lawsuit, suggested that he himself created a Facebook account, request that the plaintiffs add him as a friend “for the sole purpose of reviewing photographs and related comments in the camera, he will promptly review and disseminate any relevant information to the parties. The Magistrate Judge will then this Facebook account.” (*Barnes v CUS Nashville* (M.D. Tenn. [2010])). It is unclear from the proceedings if this bid has been implemented, however it is peculiar and the judge is proactive.

The first news in their headline brings the idea of using social media data as Evidence in Criminal Trials and explain that the defence has been using this as a tool to question the intention or veracity of the testimony of witnesses due to the pictures they upload in the social media.

In my analysis, I realize two points of interests: firstly, I understand that other forms of conflict resolution with a structure more litigating might to benefitiate of the use of social media data as a piece of evidence too due to an analogy with litigation.

Secondly, the discussion related to consent in the case must be analyzed one-by-one, because it seems depends on the subject matter in investigating. Owing to privacy is not an unconditional right, must have to make a ponderation between the fundamental right that be prevailed.

Concerning the second news from the Irish Times, the main idea is about the transformation of social media in evidence, and how badly can affect people.

So, from this, I evaluate that not every single piece of data from social media can be utilized in an alternative dispute resolution without the right of the part to questioned about the precedence or veracity. It seems necessary to not becoming social media in a popular court. And therefore it is important to remember law due legal process is also a fundamental right and never be deprecated.

Another point evaluated, the news clarified that does not belong to functions of Gardaí the protection of personal data on the internet. But they still concern about the possibility of other crimes as defamation, and it is connected to the topic of personal data.

5. Discussion

In this chapter, the results of the discussion of the data from the previous chapters will be presented and, to facilitate, they will be divided into two sections: alternative dispute resolution and GDPR and ethics.

5.1. Types of Alternative Dispute Resolution

There are several non-contentious forms of conflict resolution, for example, adjudication, conciliation, Expert Determination, and each has its peculiarities. However, to this study, be tangible, I focus on arbitration and mediation, that I have already cited in the first chapter.

In order to analyze the possibility of using data from social networks in these types of conflict resolution, I need to bring the main characteristics that differentiate them.

5.1.1. Arbitration

I would like to introduce the idea of arbitration is an alternative dispute resolution and the definition according to Judge Romilly M.R. is "Arbitration is best defined as an extra-judicial legal mechanism for resolving dispute by referring them to a neutral party for binding decision or

award.”²⁶ Although this definition it is clear, it not inform that's why the main reason is the arbitration is so attractive, is a voluntary, in other words, totally chosen by the parties and also it is a private and confidential process.

The parties need to manifest the intention to solve their conflict with the arbitration by called is an arbitration clause. Normally, the parties adopted before the dispute arises, but it is possible to establish after that, it just necessary the parties agreed to it.

Regarding it is important to notice the arbitrator is chosen by the parties; thus they demand to someone else who has special knowledge or experience relevant to the particular case. Thereafter, the arbitrator has a meeting to discuss their requirements and stipulate an agenda to them submit the claim, disclosure of documents necessary, exchange of witness statements, expert reports to address the dispute.

The next step is arbitration hearing, where the arbitrator will decide the dispute using for this the rules and laws applicable to the arbitration. Although in the arbitration is extremely flexible about the procedures and law, and both parties should agree with the method chosen, that demonstrate a flexible application of legal principles.

In relation to the arbitral award, this needs to be written as stated in the Arbitration Act 2010, is also binding and enforceable, so the party in favour of whom the award has been made can seek to have that award made enforceable as a court order.

Another advantage resultant of the arbitral award, there is a limited grounds of appeal to the courts, that ward just can be appealed in small and specific situations establish in the arbitration Act. So, the arbitral award can be more enforceable than a decision of a court of the first instance. Additionally, the arbitration has the benefit of the enforcement abroad as a result of the New York

²⁶ An early definition is that of the 19th-century judge Romilly M.R. in *Collins v Collins* (1858) 26 Beav. 306; 312 E.R. 916.

Convention. In such a way, is much easier to enforce all the 150 countries signatories to the convention recognize the of the arbitral award.

With reference to a range of outcomes, in arbitration, there will be a winner and one loser and the structure is based on polarising. It happens because the decision is made by a third party, the arbitrator, in an arrangement very similar to litigation.

In regard to outcome private, in arbitration, the rule adopted is the sigil, so this way all proceedings are held in private. In most of the cases of arbitration, the parties in dispute do not have interesting to reveal sensitive information. So, they chose arbitration to solve the conflict in order to keep the confidential information.

Based on these significant characteristics of Arbitration and the data collected in the previous chapter, which show the use of social media data in legal actions such as bodily or criminal damages, especially in cases where users have their public profile offering information on social media, removing the ethical component. It seems clear about the possibility of using data from social networks in alternative dispute resolution. However, it will depend on the type of ADR; an Arbitration is adequate due to its attributes.

The peculiarity of Arbitration is based on the will of the parties, whether in terms of the choice of the method of resolving the conflict itself, the arbitration clause, the choice of the arbitrator, the procedures and the legal regime by which the conflict will be judged. What I interpret is that if the parties can choose who will judge them, why can't they choose to use social media data. It does not seem consistent with the Arbitration structure to impose no use of data from social networks. Thus it is possible that the premise of using the data from social media as used as evidence in arbitration that it happened and due to the clause of confidentiality, the recording was not public to a consult.

Confidentiality is seen as an advantage for the parties when them considering the arbitration to solve a dispute because it keeps the commercial secrets in cases of large corporations. Nevertheless

can be considered a problem in case of use data from social media, it is not the truth. Because what it is relevant about the clause of confidentiality in the arbitration, it is compulsory to the parties and the arbitrator to not show the details of proceeding to people that not related to the case. So, there is no special motive to the parties that could be a discouragement to using the data from social media. Another point to consider is the similarity of the structure of arbitration and litigation, both using the formation where the third neutral part judges the issue. From that decision, there will be a winner and loser, a design polarized. From this, I decode the possibility to use data from social media due to analogy from litigation. Thus, it is important to understand that the analogical argument is a rational method of reasoning, while undemonstrable, which stands on its own and has its own qualifications, which are not derived from abstract reason but are rooted in the experience and expertise of the lawyers and judges who use it.

5.1.2. Mediation

In consonance with McLoughlin, c. and Reynolds, K. (2019), "mediation is a facilitating and non-contradictory process in which an independent mediator acts as an 'intermediary' to facilitate an agreement between the parties." Additionally is regulated by the 2017 Mediation Act.

As arbitration, Mediation is also a voluntary and confidential process. In relation to the clause of confidentiality, it provides that communications between parties during mediation shall be confidential, and also include the mediator.

As mentioned earlier, the parties choose to participate in a Mediation, and because it is a more participatory process, they also choose the mediator. And depends on the subject of the dispute, it is better to select a mediator who is an expert in the area.

The task of the mediator is to be a facilitator, with the goal of supporting the process, collecting facts, and helping to solve problems, the mediator isolates the problems, allows the parties to

determine the strengths and weaknesses of the case of each other, and enables the parties to work together to settle.

Thus the mediator does not decide who is right and wrong, because in this process is the parties alone determine the outcome. He acts as an intermediary, to facilitate the dialogue and to emphasizes on common goals and brings parties together, without the power of choice.

The particularity of the Mediation there is less emphasis on legal principles, which might induce creative solutions possible. It happens because the parties building the agreement and the structure of the mediation is not as rigorous as the litigation or arbitration. Obviously, there are rules to be followed, as I said before, is regulated by the Mediation act that set up standards.

The result that arises from the settlement agreement, in general, is not binding, as in arbitration. However, it is possible to establish that the agreement produced by the parties becomes enforceable as a contract if the parties agree to the terms and reach the agreement.

Another specificity of mediation is that interest-based conflict resolution procedures broaden the conversation beyond the legal rights of the parties to look at the parties' fundamental interests, resolve the emotions of the parties, and pursue innovative alternatives to the dispute resolution. The aim of these procedures is to explain the true motivations or underlying interests of the parties in the conflict in order to find a solution that is mutually satisfactory and meets the real interests of both parties.

Mediation, on the contrary to litigation or arbitration, has the structure win-win solution configures by the collaborative approach, in that the parties jointly elaborate and evaluate the different opportunities that allow both sides to gain for resolution increasing the chance of settlement.

Mediation is indicated in cases where the parties wish to preserve a long-term relationship or need to maintain an ongoing relationship. Due to this more conciliatory approach that focuses on confronting the conflict, without blaming people, thus preserving the interpersonal relationship.

In line with the characteristics presented of mediation and all the information compiled in the previous chapter, about the possibility of using social media data in a mediation, it is inconceivable or improbable due to the reasons listed follow below.

According to my respondents' responses at the interview stage of my primary data, they indicated that the current data protection law, the GDPR, is a barrier to the use of social media data in a mediation. As the interviewees did not specify the reason for the impediment, I reflected on the matter, and I assumed that these are restrictions on the processing of personal data for all economic operators, at all levels of companies, to provide the same level of legally required rights and obligations and responsibilities of controllers and processors, to ensure consistent monitoring of the processing of personal data, except for domestic use, not related to a professional or commercial activity.

This type of control in the processing of personal data can be a difficulty in the case of mediators because their activity could be considered an economic and that it causes a high level of precaution on the handling of personal data. This imposition is derived from the fact the mediator is a third neutral part with a contractual link with the parties in a mediation. And all these processing and controlling as it represents an increase in cost for the mediator.

Another characteristic of mediation, it could be a barrier to using social media data on mediation is referent to the approach collaborative and the win-win structure. This type of approach is to facilitate the proximation of the parties with the objective of reach an agreement of both sides has winnings. The mediation method is inimical to an adversarial approach, which may be characteristic of other dispute resolution processes, such as litigation and arbitration.

The idea to use this kind of data from social in an ambience of dispute non-adversarial is incompatible due to the nature of a piece of evidence working as a proof. Thus, the admissibility of

using data from social media to confront the controversial part not seems compatible with this type of approach.

Concerning the confidentiality inherent to mediation, I believe it is not an obstacle to the use of data from social media. Because the confidentiality, as an arbitration, it is compulsory to the parties and mediator to not show the details of proceeding to people that not related to the case. At the same time, it is not a helping to these strategies of disclosure by social media data.

As referred before, it is increasing that number of cases where the data from social media is utilized in the cases of personal injuries, the parties take advantage of these to contradict the other party in the injury claim in the court.

As regards the admissibility, referring to the use of mediation in the event of a personal injury, it is feasible due to the section 15 of the Civil Liability and Courts Act 2004 provides that mediation in a personal injuries action can only be initiated at the request of one of the parties.

Evidently, should neither party request the holding of a meeting the court cannot compel the parties to consider mediation, In order for a mediation process to work, goodwill is required from both parties, due to voluntary process.

However, the Law Reform Commission noted that mediation might be especially suitable where parties wish to seek redress that is not available through the court, where an apology is sought. Due to that non-adversarial character of mediation, this way if the parties are looking for a reparation, it is not indicated.

For the purposes of this research, the admissibility of the use of data in personal injuries cases in litigation is acceptable, further to my argument. But in mediation, it seems precarious this hypothesis because the structure is non-adversarial of mediation. Also, the purpose of mediation is to settle an agreement beneficial for both parties that I believe is not admissible the use of data from

social media in mediation, so no make sense to utilize the analogy with litigation in this exemplification.

5.2. Ethics and GDPR

In this section, I will focus on the central questions about the ethics of using social media data in alternative conflict methods in order to analyze the main issues involved with the research theme.

The first ethical dilemma about the possibility or admissibility of using data from social networks in ADR, when user data is publicly accessible. What about the premise of the need to notify the user of the intention?

Given the data collected and analyzed, in order to answer the question of this research, I understand that there is a variation in the answer according to the alternative conflict resolution method being analyzed.

I will start by dissecting the arbitration method, I corroborate with the idea of the admissibility of using data from social networks, but in order to be used, it is necessary that the user has defined a public profile as a privacy setting. And this premise about the configuration of privacy is relevant, and it will be the next point to be discussed in this study.

Still on the privacy setting of the social network, as highlighted by O'Doherty, M., "Facebook users have a choice as to whom they make the content that they upload available. Their content can be visible to all users of Facebook - approximately 2.2 billion people worldwide - or its visibility can be limited to a number of Facebook 'friends' chosen by the account holder. “

This idea fits well with and also confirms our previous premise, that I postulate about that the use of social media data can be extend to arbitration. As previous referred, the arbitration has a structure of proceedings similar to litigation, and not only that but it is based on that premise the third neutral part decide the case and there will be a winner and a loser, pretty much identical to litigation.

Taken as a whole the correlation between Arbitration and litigation is worth noting and due to it the similarity with litigation, I substantiate the elegant and simplified solution using the analogy for extend the uses of data for arbitration.

Returning to the hypothesis of admissibility of uses of data from social media in mediation, as reported earlier, although the mediation has the structure with a neutral third party, your proceedings and outcome are totally different from the litigation, because the mediation is non-adversarial. As a consequence, due to the fact, I reject the proposition to extend the use of social media data based on analogy for the mediation.

Besides this approach to support the hypothetical extension of the use of data from social media to ADR, the core issue about the ethics involved pretty much concerned me. In the article 'Social media, privacy and evidence' has been demonstrated, the positioned is that a favourably to the ethical use of the social media data since their setting of privacy is public. However, the superior court issues remain unventilated here.

In recent years there has been growing interest in the privacy issue. It has been indicated as being as the position most propitious that a superior court will adopt the position is if any interest of justice or it appears to contradict sworn testimony, these are not protected by the setting of privacy and depends on the type of claim can be ordered a disclosure, without harm of the ethics.

This section seeks to address about the ethical component, and the second proposition on the main issue is related about the premise of the need to notify the user of the intention of using his personal data on alternative dispute resolution. Still anchored by the idea of the setting of privacy, this fits the ethics standards are not violated in the hypothesis of public profile, also confirms our previous findings. In this way, the idea uphold it is not mandatory to give any piece of information previous.

In this case, the user of social media configured their setting of privacy to only friends and family had access to their information, that evidently indicate that person would like to keep in privacy some types of information shared in their profile.

As suggested, the evidence we found points to these questions does not appear to have been ventilated in the courts in this jurisdiction yet. However, An alternative solution, though with high overhead, related to the theme was decided by the adjudicator on the Workplace Relations Commission (WRC) is slightly interesting. The adjudicator understands that a closed group to members of the union is not private. Besides, he argued that is a naive thought to post on the world wide web and aspired to privacy.

In addition, the evidence points slightly to the indiscriminate use of data from social networks, in our case, in the idea of extending the conjecture for arbitration and mediation. The previous proposition on the admissibility of using these data on arbitration and inadmissibility in mediation remains valid.

The ethical question arises as to how it will be possible to access this social media data on the condition that it is unrelated to the person to access its content.

The results of this finding of ethical proposition confirm that the best way to avoid a dilemma is to ask the user's express consent to use their social media data, according to the idea expressed in article 7 of general data protection. The user must express agreement about the treatment of his personal data. And in my point of view, is this the correct way to deal with this situation in the ethical approach.

Despite the fact, on the data collected, the court is not concerned about how the material was obtained by the opposing party, and it is evident because the courts of this jurisdiction do not generally appear to inquire as to the source of such material, although they would presumably do so if its authenticity were called into question by the claimant.

However, it is just sparse decisions by the personal injuries and those issues will not be appreciated by the Irish Court. And to reinforce to the idea, the better option to avoid any ethical issue about uses of data from social media and also the treatment of personal data, it is asking the titular of the right of privacy to access their content.

In my last point, it the conjecture of an exception to the premise to ask for express consent to the user in case the setting the privacy to not-public. In our study, this result provides further evidence for two considerations: if any interest of justice or it appears to contradict sworn testimony, these are not protected by the setting of privacy and depends on the type of claim can be ordered a disclosure, without harm of the ethics. Only on these specific conditions, there is a possibility to escape from the ethical dilemma to achieve a bigger goal.

6. Conclusion

In this paper has investigated the discussion about ethics in the context of alternative dispute resolution from data collected in social media and the impact of the law in force GDPR. To achieve the topic of this research was necessary to answer two questions one concern about the admissibility of using data from social media in alternative dispute resolution, and the if this the possibility of using social media data is ethical according to the parameter of the law, General Data Protection Regulation.

The results of this study indicate the idea depending on the method of alternative dispute resolution. The answer could be different to each one. The evidence supports the admissibility of using data from social media in a case the parties chosen arbitration due to the peculiarity the similarity of the structure of litigation combined with the power of choice of the parties to design the from the choice of the arbitrator to the legal parameter will be utilized.

In the case of mediation, based on the collaborative approach where the parties building together a settlement benefit for both, the results would seem to suggest that it is inadmissibility to extend the idea of using data from social media in this context.

The evidence from this study points towards the idea about the ethic limit to explore the world of social media respecting the human right of privacy in the context of alternative dispute resolution was not settled by Irish high courts. Taken together, some sparse decision would seem to suggest that depending on the setting of privacy configured by the user could be a criterion to using data from social media without cross the line of ethic. In general, the findings indicated there is no ethical dilemma to exploit data from social media when social media data since their setting of privacy is public to all billions of users.

Considerable progress has been made, however, an implication about the possibility of the ethical question arises as to how it will be possible to access this social media data on the condition that it is unrelated to the person to access its content. The investigations into this area are still ongoing as I said the high court does not give a precedent.

Nonetheless, the results of this finding of ethical proposition confirm that the best way to avoid a dilemma is to ask the user's express consent to use their social media data, according to the idea expressed in article 7 of general data protection. The user must agree to the treatment of his personal data. And from my point of view, is this the correct way to deal with this situation in the ethical approach.

Our research, highlighted in this paper, has underlined the importance of social media in our lives and searched to delineate from the findings a possibility to use social media in a dispute resolution in an ethical way. So far, the results have been very encouraging, and I believe that thematic has various nuances, and we are confident that our research will serve as a base for future studies.

7. Reflections

Along the journey to pursue an international master's degree, the path was difficult, and at times I thought about giving up. However, my family and friends encourage me to remain strong and overcome adversity.

As an international student, we face the challenge of overcoming language difficulties. But I can see how we can adapt and grow against the whole situation.

After that, my colleagues and I had an exhaustive routine between work and classes. Although, our professors endeavoured to make the lessons in some useful and comprehensive, sometimes tiredness won out.

With regard to the lessons learned, I thank the negotiation and mediation classes for helping to develop my negotiation and active listening skills. These and other skills that I am looking forward to playing in my future legal jobs.

The class and exams online from the last semester were a bit challenging but the biggest test was the dissertation. It is a very difficult process to write a thesis, and in a language that is not your mother language could be double trouble. In order to have some guidance through this process, the tutor had a special participation in making it easier and possible.

Regarding the theme chosen for the dissertation, despite the challenges involved because it is something relatively new, it is extremely gratifying to realize that your work can contribute to changing the perspective regarding the use of data from social networks.

The most challenging point on the research was the collecting of data and transposing it in a way to answer my research question in a deep manner. However, I hope that my curiosity and study that it collaborates with the developing of the theme.

Thereafter, it was a journey of growing in knowledge about social media and about ethics and limits for this incredible tool but also dangerous.

Overall, I could say that research project transforms me and made myself questioned my interaction with social media.

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