### Index

### Introduction

#### Part I – Google vs. Vivi Down

# Chapter 1 – Legal Analysis of the Trial and of the Arguments of the Parties

1 The Facts

2 The Trial Before the First Instance Court

2.1 The Accusation

- 2.2 The Charge of Unlawful Processing of Personal Data
- 2.3 The Charge of Defamation

3 The Arguments of the Public Prosecutor Before the Appeals Court

- 3.1 Applicable Law
- 3.2 Defamation and the Duty of Care
- 3.3 The Privacy Policy and the Consent of the Data Subject
- 3.4 The Specific Risks Carried by the Data Processing
- 3.5 The Hosting Defense
- 3.6 Remarks

4 The Arguments of the Defense Attorneys Before the Appeals Court

- 4.1 Applicable Law
- 4.2 The Hosting Defense
- 4.3 The Privacy Policy and the Consent of the Data Subject: the Controller Issue
- 4.4 The Specific Risks Carried by the Data Processing

## **Chapter 2 – The Appeals Court Decision: Procedural and Substantial Issues**

1 The Issue of Jurisdiction at the Heart of «Internet Governance»

2 The EU Answer to the Issue Related to the Applicable Law with Regard to the Enforcement of the European Data Protection

Legislative Framework and the Choice of the Appeals Court to Consider Relevant the Italian Legislation

3 The Confirmation of the Acquittal from the Defamation Indictment

4 The Acquittal from the Charge of the Unlawful Processing of Personal Data

5 The Vexata Quaestio of the «Passive» or «Active» Hosting Provider

### Part II – Beyond the Case. Open Issues and New Challenges

### Chapter 3 – The Law of the internet and the ISP: Applicable Law, Jurisdiction and Liability Regime

1. Applicable Law and Jurisdiction in a Broader, Comparative, Perspective

2 The Achilles' Heel(s) of the «Futility» Argument: Three Points Overlooked by the Anarchic approach

3 ISPs' Liability Regime

#### Chapter 4 – Towards a New European Data Protection Legislative Framework

- 1 Introduction
- 2 Context of the Proposal
- 3 The Draft Regulation
  - 3.1 Key Provisions of the Draft Regulation
  - 3.1.1 Definitions and Requirements for Consent
  - 3.1.2 Principles Relating to Personal Data Processing; Lawfulness of the Processing
  - 3.1.3 Rights of Data Subjects
  - 3.1.4 Obligations of Controllers and Processors
  - 3.1.5 Security Data Breaches
  - 3.1.6 The Consistency Mechanism
  - 3.1.7 Transfers of Data to non-EU Countries

3.1.8 Right to Compensation, Penalties and Administrative Sanctions

- 4 Territorial Scope of the Draft Regulation
  - 4.1 Applicable Law under the Data Protection Directive

4.2 Applicable Law under the Draft Regulation4.2.1 In Particular: the «Offering of Goods or Services» Criterion

4.2.2 Criticalities of the «Targeting» Test and Open Issues

### Appendix – English Translation of the Appeals Court's Decision of 21 December 2012