

# European Company Law's Digital Transformation: Corporate Digital Responsibility

Università di Macerata  
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INSTITUT FÜR DAS RECHT  
DER DIGITALISIERUNG

# Corporate Digital Responsibility

## - Agenda -

- I. Origins and Spread of the Term
- II. Dimensions of Corporate Digital Responsibility
- III. Normative Framework
- IV. Implications for Corporate Law
- V. European Developments

# I. Origins and spread of the term

1983

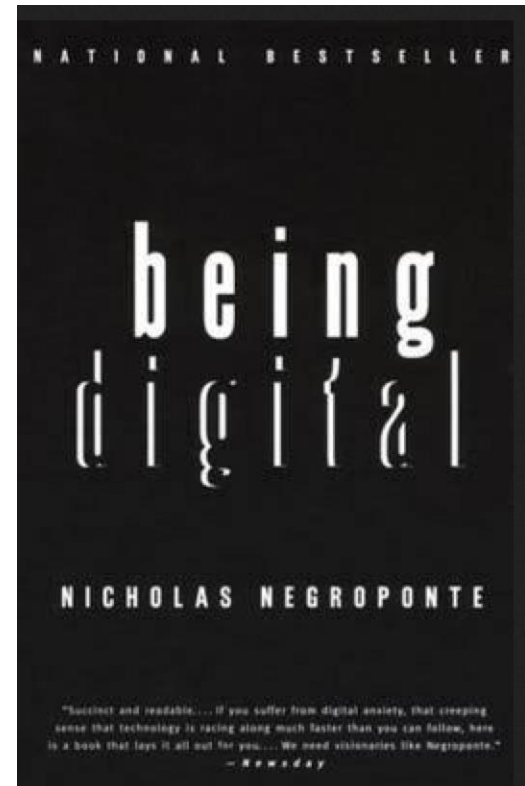
## THE CASE FOR CORPORATE SOCIAL RESPONSIBILITY

Henry Mintzberg

In an economy of giant, divisionalized corporations, corporate social responsibility is almost impossible to achieve. Yet, the author contends, corporations must achieve it if our society and economy are to continue and to flourish.

The concept of social responsibility—once known as “noblesse oblige” (literally nobility obliges)—has experienced a vigorous resurgence since the 1950s. As Elbing [19:79] notes, citing references in each case, the

begins with a similar premise—that social responsibility reflects a shifting of power into the hands of people less subject to traditional forms of control—but concludes, as a result, that it is a “fundamentally sub-



1995

# I. Origins and spread of the term

## 1. German politics

**DIGITALISATION  
CALLS FOR  
RESPONSIBILITY**



1 JUN, 4:00-4:45 PM



**The CDR Code.**  
Our responsibility

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# 1. Origins and spread of the term

## 2. Politics in other European countries



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# I. Origins and spread of the term

## 3. Academic realm



NachhaltigkeitsManagementForum (2021) 29:13–29  
<https://doi.org/10.1007/s00550-020-00509-x>

ORIGINALBEITRAG / ORIGINAL ARTICLE

### “Corporate Digital Responsibility”

New corporate responsibilities in the digital age

Christina J. Herden<sup>1</sup> · Ervin Alliu<sup>1</sup> · André C. Society (2021) 58:179–188  
 Caleb Griffiths<sup>1</sup> · Shrishti Gupta<sup>1</sup> · Sahil R. <https://doi.org/10.1007/s12115-021-00594-8>  
 Greta Lange<sup>1</sup> · Leandro Moles de Matos<sup>1</sup> ·  
 Venkata Pilla<sup>1</sup> · Baresh Raj<sup>1</sup> · James Roe<sup>1</sup> ·  
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Bus Inf Syst Eng 64(2):127–132 (2022)  
<https://doi.org/10.1007/s12599-022-00746-y>

EDITORIAL

### Corporate Digital Responsibility

Relevance and Opportunities for Business and Information Systems Engineering

Cristina Mihale-Wilson · Oliver Hinz · Wil van der Aalst · Christof Weinhardt

ORIGINAL ARTICLE

### Towards an Equitable Digital Society: Artificial Intelligence (AI) and Corporate Digital Responsibility (CDR)

Karen Elliott<sup>1</sup> · Rob Price<sup>2</sup> · Patricia Shaw<sup>3</sup> · Tasos Spiliotopoulos<sup>1</sup> · Magdalene Ng<sup>1</sup> · Kovila Coopamootoo<sup>1</sup> ·  
 Aad van Moorsel<sup>1</sup>

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CAMBI  
UNIVERSITY

### Corporate digital responsibility

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Data & Policy (2022), 4: e12  
[doi:10.1017/dap.2022.2](https://doi.org/10.1017/dap.2022.2)

COMMENTARY

### Data responsibility, corporate social responsibility, and corporate digital responsibility

Joanna van der Merwe<sup>1,\*</sup> and Ziad Al Achkar<sup>2</sup>

## II. Dimensions of Corporate Digital Responsibility

- **Reference to extra-legal norms**
  - Ethical dimension, also Corporate Reputation
  - Future Transformation into Hard Law?

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  - Contradictions or conflicts?
  - Politicization of Corporate Governance?



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  - Building on the discussion about the corporate purpose
  - Constitutional dimension, but also relevant for legal policy

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- **Expression of Corporate Responsibility**
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  - Constitutional dimension, but also relevant for legal policy
- **Shaping Digitalisation**
  - Overlap with Corporate Social Responsibility?
  - What does “Digital” mean?

# III. Normative Framework

## 1. Corporate Law

- **Duty to obtain information**
  - Cf. sec. 93 (1) German AktG and sec. 2381(5) Italien Codice Civile (“Gli amministratori sono tenuti ad agire in modo informato”)
  - Prohibition to completely dispense with digital technologies
  - Costs and benefits of obtaining information may be weighed against each other, but: subject to judicial control

# III. Normative Framework

## 1. Corporate Law

- **Duty to obtain information**
- **Duty to monitor**
  - Requirement to engage in basic risk management
  - Need to monitor compliance with applicable laws, standards, and internal protocols, and to identify developments that could jeopardize existence of the company
  - Obligation to counter technology-specific risks, requires basic technological knowledge and policies for selecting and monitoring digital technologies

# III. Normative Framework

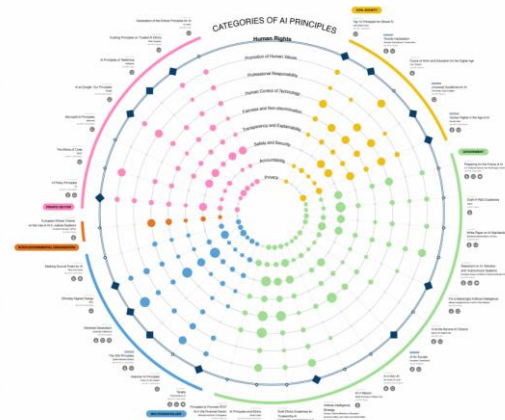
## 1. Corporate Law

- **Duty to obtain information**
- **Duty to monitor**
- **Duty of obedience (or: Duty of legality)**
  - requires directors to organize and monitor the company in a way that no violations of (legal) norms occur
  - potential to translate digitalization-related obligations into directors' duties
  - Example: requirement of Art. 24 GDPR to implement appropriate technical and organisational measures in order to ensure compliance with GDPR

# III. Normative Framework

## 2. International (so-called “ethical”) Guidelines

- How can the law keep pace with innovation?
- Analogies to existing legal provisions, e.g. Art. 17 MiFID II on algorithmic trading
- Extra-legal norms: Ethical Guidelines on the use of AI
  - Examples: OECD Council Recommendation on Artificial Intelligence of 22 May 2019; European Ethics Guidelines for Trustworthy Artificial Intelligence (AI), prepared by the High-Level Expert Group on Artificial Intelligence, ... and many others



(c) Berkman Klein Center - <https://cyber.harvard.edu/story/2019-06/introducing-principled-artificial-intelligence-project>

# III. Normative Framework

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  - Examples: OECD Council Recommendation on Artificial Intelligence of 22 May 2019; European Ethics Guidelines for Trustworthy Artificial Intelligence (AI), prepared by the High-Level Expert Group on Artificial Intelligence
  - Substantive and procedural principles:
    - Controllability of technology
    - Accountability
    - Diversity, non-discrimination and fairness
    - Public good requirements (e.g. sustainable development)
  - Yardstick for Corporate Digital Responsibility?

# III. Normative Framework

## 3. Entrepreneurial Self-regulation

- **Companies and larger business associations develop their own guidelines for Corporate Digital Responsibility**
  - Example: Konica Minolta Italia



### Sfide causate dalla digitalizzazione: La responsabilità digitale di Konica Minolta

Viviamo in uno dei periodi più prosperi della storia umana. Tuttavia, allo stesso tempo, l'umanità deve affrontare enormi sfide e cambiamenti dovuti alla digitalizzazione, che sta cambiando il modo in cui viviamo e lavoriamo. I cambiamenti climatici, l'inquinamento massiccio, le specie in via di estinzione e la migrazione sono solo alcune delle sfide sostenibili che dobbiamo affrontare a livello globale. Noi possiamo però influenzare e modellare il nostro ambiente in continua evoluzione e le sfide in materia di sostenibilità. In tal caso, le aziende svolgono un ruolo centrale. Konica Minolta riconosce il suo ruolo e lo definisce attivamente all'interno della propria responsabilità digitale aziendale.



Konica Minolta si concentra su quattro campi di azione chiave relativi alla responsabilità digitale aziendale:

### Responsabilità in materia di dati: Andare oltre i requisiti legali

I requisiti e le norme legali in materia di protezione dei dati e sicurezza delle informazioni, nonché di hacker/attacchi informatici e skimming, richiedono un uso responsabile dei dati personali. Konica Minolta è consapevole della propria responsabilità in materia di dati non solo come obbligo a rispettare i requisiti e gli standard previsti dalla legislazione per la protezione dei dati e la sicurezza delle informazioni, ma anche a trattare volontariamente i dati personali con attenzione e responsabilità. L'azienda agisce a tal scopo perché comprende il senso etico verso la protezione dei dati e perché proteggere i dati delle persone è un diritto umano. Konica Minolta intende, pertanto, garantire la privacy e mantenere il controllo delle persone sui propri dati e sulla propria impronta nel mondo digitalizzato.

Pertanto, Konica Minolta si è occupata di:

- Definire una politica globale sulla protezione dei dati personali che va oltre il GDPR
- Predisporre figure responsabili del coordinamento della protezione dei dati in ogni paese europeo
- Istituire una gestione della sicurezza delle informazioni
- Offrire ai propri clienti soluzioni di sicurezza come [bizhub SECURE](#)
- Adottare un approccio a 360 gradi, che include corsi di formazione sulla sicurezza



# III. Normative Framework

## 3. Entrepreneurial Self-regulation

- **Companies and larger business associations develop their own guidelines for Corporate Digital Responsibility**
  - Example: Konica Minolta Italia
  - International Guidelines as an attempt to bundle entrepreneurial self-regulation
  - Legal effects? Problem: Variety of standards blurs doctrinal differences between their normative foundations

## IV. Implications for Corporate Law

- **Information and Disclosure**
  - Internal and external information duties
  - Examples: Right of shareholders to be provided with information in general meeting; non-financial disclosure according to CSR Directive
  - Information on the use of digital technologies to be included?

## IV. Implications for Corporate Law

- **Information and Disclosure**
- **Board composition and structure**
  - Whether and how to ensure that sufficient digital competence is available at board level?
  - Digital fitness required in particular in digitally savvy companies
  - Recommendations, but no legal requirements, to appoint Chief Digital Officers or install digital committees

## IV. Implications for Corporate Law

- **Information and Disclosure**
- **Board composition and structure**
- **Business judgment and supervision**
  - Limitations of the discretion of the board due to (1) duty to obtain information, and (2) obligation to counter technology-immanent risks
  - Questions for the supervisory board: (1) use of digital technologies in order to fulfil its monitoring task, and (2) requirement of explainability of board decision, in particular if AI is used

## IV. Implications for Corporate Law

- **Information and Disclosure**
- **Board composition and structure**
- **Business judgment and supervision**
- **Corporate Liability**
  - „Responsibility gap“ (Beckers/Teubner) due to the use of digital technologies and, in particular, artificial intelligence
  - Corporate law duty to monitor, combined with Corporate Digital Responsibility, as a solution to tackle this gap
  - Scope of duty to monitor? In particular: Does it require compliance with ethical guidelines?

# V. European Developments

- **Emergence of European Data Law**
  - Digital Single Market Strategy (2015)
  - Directive on certain aspects concerning contracts for the supply of digital content and digital services (2019)
  - Regulation on promoting fairness and transparency for business users of online intermediation services (2019)
  - Commission proposals for Digital Markets Act, Digital Services Act and Data Governance Act (2020)
  - Proposal for an “Artificial Intelligence Act” (2021)

# V. European Developments

- **Emergence of European Data Law**
- **Superposition of European Corporate Law by European Data Law?**
  - Duty of obedience reflects European Data Law, and translates it into directors' duties
  - Will corporate law lose its significance?

# Grazie per la vostra attenzione!



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