

Is Personal Privacy Possible in the Digital Age?



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Personal Privacy

- What does it mean to us as individuals?
- Does privacy matter anymore?
 - Why?
 - Why not?
- Should I care about privacy if “I have nothing to hide”?

Some Questions

- What do we mean by “privacy”?
- What has changed about privacy in the digital age?
- What do we *own* about ourselves?
- What privacy trade-offs are we willing to make?
- What possibilities for personal privacy exist today?

Some Privacy Tensions

- How do we balance, e.g.
 - Privacy vs Convenience
 - Privacy vs Free Speech
 - Privacy vs The Press: 1st Amendment
 - Privacy vs National Security
 - Privacy vs “Freedom of Information”
 - Privacy vs Economic Benefit

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Privacy

- Legal “right” - based on what?
 - Constitution - where?
 - First mention in terms of legal right not until 1890 in US
- Court cases?
 - Courts can change
 - Griswold v. Connecticut
 - Roe v. Wade

The word privacy does not exist in the Constitution.

In 1965, Justice William O. Douglas found privacy as a constitutional right in the “penumbra” and “emanations” of other rights that are in the “Constitution” in Griswold v Ct. Vote was 7-2 – there were four different concurring opinions.

Unleashed screams of “judicial activism.” Roe v Wade is likely to be challenged again with new court.

Privacy

- **Moral good?**
 - Whose morals?
 - A value that cuts across cultures?
- **Biological instinct?**
 - e.g., Animal behavior

Privacy seems to cut across many cultures but just what is considered private and to what extent varies significantly across cultures, time, and circumstances – look at post 9–11 U.S.

Animals seem to seek privacy – or at least space – and behave differently when crowded.

Privacy

- Aspect of Personhood?
- Personal Autonomy
 - Do we change behavior when we know we are being observed?
 - What we choose to read/search for
 - Who we choose as friends
 - What politics and causes we choose to participate in, and how we participate
 - Panopticon effect

There is ample research evidence to indicate that people do act differently when being observed.

That was the basis of Jeremy Bentham's suggestion of the Panopticon in a prison context.

Same basis for Hannaford's showing you on camera as you walk in the store to let you know you are being watched.

How does this affect personal autonomy?

Privacy

- Socially-granted privilege?
 - If so, society can revoke it
 - Driver's licenses

Privacy Definitions

- **Aristotle ~350 B.C.E.**
 - Public sphere vs. private sphere
 - Marketplace, political arena vs. family
- **Warren and Brandeis - 1890**
 - “The Right to Privacy”
 - “the right to be let alone”

1890 is the first case of an assertion to a legal right to privacy in the U.S. – 100 years after the Constitution went into effect.

Article was the result of cameras and emerging “yellow journalism” of the time

Privacy Definitions

- **Prosser - 1960 (tort violations)**
 - intrusion upon a person's seclusion or solitude, or into his private affairs.
 - Public disclosure of embarrassing private facts about an individual.
 - Publicity: placing one in a false light in the public eye.
 - Appropriation of one's likeness for the advantage of another.

Prosser looks at privacy as a tort claim – a violation of tort law under these conditions

These are pre-computer but can apply to information as well as physical intrusion

Privacy Definitions

- **Alan Westin - 1967**
 - the ability to determine for ourselves when, how, and to what extent information about us is communicated to others
- **Weitzner - 2008**
 - Following Westin, we would say that privacy is the claim of individuals, groups, and institutions to determine for themselves when, how, and to what extent information about them is used lawfully and appropriately by others

Privacy Defintions

- **Nissenbaum - 2004, 2006**
 - **Contextual Integrity:** “Contextual integrity ties adequate protection for privacy to norms of specific contexts, demanding that information gathering and dissemination be appropriate to that context and obey the governing norms of distribution within it.”

Example: ICU surveillance equipment vs. video cameras in a park.

Privacy in this approach seeks to understand when information flow is appropriate and when it is not rather than to have blanket definition.

Five Questions

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The Digital Age

- Small town MAD no longer works
- Memory is transient: digital never forgets
 - Google Streetview
 - Surveillance cameras
 - Self-descriptions (Facebook, etc.)
- EU attempt to create a digital “Right to be forgotten”

“Mutual Assured Destruction” in a small town where everyone knows everyone else’s business– John Perry Barlow.

So many examples of people being affected by what technology makes possible:

- GPS “testifies” against its owner – or the black box in your car
- funny picture a teacher put on Facebook or MySpace costs her her job
- Surveillance camera footage at a convenience store is subpoenaed for a divorce case
- Google streetview reveals where a battered wife is hiding
- credit companies and employers are now searching social sites to help them make lending and hiring decisions
- government surveillance at all levels

The Digital Age

- Aggregating information is easier
- Understanding what we agree to takes effort, e.g., privacy policies
- Services we use locate us, describe us, profile us
 - With our knowledge (purchases)
 - Without our knowledge (posted photo)

Even if all the information we're talking about were available before computers (it wasn't), obtaining and putting it together took immense effort. Now it is available at a click.

We seldom read privacy policies or terms of service and that can have significant effects on what information about us is disseminated.

E.G., <http://regex.info/exif.cgi>

The Digital Age

- Government claims the right to “know everything” about its citizens in the name of national security
- Technology now makes that possible, e.g., Snowden NSA revelations

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What Do We Own?

- Information about ourselves?
- What if others gather it?
 - Whose “property”?
 - If we don’t own it, how can we claim to control it?
- Is personal information part of “inviolate personality”?

When is information about ourselves “ours”?

What if we provide the information ourselves in order to buy something, or register a product, or enter a contest, or get a divorce or adopt a child? If we give it, do we still own it?

What Do We Own?

- Do we own our cells?
- Do we own our DNA?
- Are parts of our body our own “property”
 - Moore v Regents of the University of California
- Can we be forced to give up DNA as we can fingerprints?

– Fingerprints open computers now – Cal court has ordered a person to press her phone

– Problem with extracting materials from people in other cultures and then having that material be the basis of patents – original donors might have to pay for products of their own cells to treat them later on

– As DNA based “personalized medicine” becomes more common, watch for more and more questions of this sort

<http://online.ceb.com/CalCases/C3/51C3d120.htm>

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What Will We Trade?

- Convenience
 - Debit and credit cards
 - Membership cards, e.g., YMCA
 - Easier access at airports-TSA Pre✓
 - GPS
 - EZ Pass
 - Online services (email, software, maps and directions, etc.)

What Will We Trade?

- Economic Benefit
 - Store discount cards
 - Internet shopping

What Will We Trade?

- “Security”
 - Government surveillance
 - Travel (air, sea, land)
 - Banking
 - Business records
 - Email and phone conversations
 - Location tracking
 - Education

What Will We Trade?

- Two “goods” in conflict:
 - Public right to know
 - Personal privacy

Government records on the web. You could always get them but you had to physically go the courthouse or registrar of deeds or wherever. Now possible to search from the desktop and to aggregate info in public records.

Maine records on web have SS# – cost too much to clean them up

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Possibility of Privacy

- Leave as light a trail as possible
 - Not a complete solution - too much data already exists
- Take tech measures yourself
 - Control cookies
 - Surf anonymously, e.g., Tor
 - Encrypt email and computer files
 - Search anonymously

Manage your cookies
Disconnect your modem now and then
Search engines: DuckDuckGo, StartPage
Tor
TrackMeNot
Hide My Ass or other VPNs

Possibility of Privacy

- **Keep your information to yourself**
 - Say no when asked
 - Read privacy agreements
 - Opt out online and off
- **Vote with your dollars**
 - Don't do business with those who don't respect privacy and tell them

No requirement to provide additional info when you use a credit card. When asked for phone or zip, politely say no.

Possibility of Privacy

- Get laws passed that maximize personal privacy and have real consequences for violation
- Most laws are woefully out of date
 - Fair Information Practices (FIPs 1970s)
 - Electronic Stored Communications Act (1986 - current effort to update)
 - Video Privacy Protection Act (1988)

Most of our laws regarding privacy in the electronic age were written in the 1970's& 80's and are woefully out of date, and horribly behind technology

To Investigate Further

- *Intellectual Privacy* - Neil Richards
- *Privacy in Context* - Helen Nissenbaum
- *Data and Goliath* - Bruce Schneier
- *Understanding Privacy* - Daniel J. Solove
- Electronic Privacy Information Center
 - www.epic.org
- Choose Privacy Week
 - chooseprivacyweek.org



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