

Preface

I find the implications of tomorrow's information society and the advancement of the latest technologies capable of infringing upon the right to privacy and individual liberty extremely relevant, which led me to write this book on the subject.

The discourse in privacy and technology is a legal and political issue, and is more and more a matter of international relations and human rights law. The interplay between politics, ethics, social issues and technology/technological development is a growing phenomenon. Recent examples of the intersection of (international) politics, law, technology and privacy involve the Passenger Name Record (PNR) dispute between the US and EU, the potential worldwide deployment of body scanners, the clash between the European Parliament and EU Council of Ministers over the US-EU SWIFT agreement,¹ and the rift between world leaders and the US Government over recently revealed surveillance activities—just to name a few.

Privacy is a fundamental human right, and deserves just as much attention as any other human right. While there are certainly more grave human rights violations across the globe, particularly in Asia and Africa, here in the West, predominantly in the US and the UK, the threat upon the right to privacy and liberty thereof at the hands of those who control advanced technology is and will remain the story of the early twenty-first century. This is still true, I believe, even in the midst of other highly significant and pressing matters, such as the global fight against terrorism, nuclear proliferation, climate change, environmental disasters and the on-going global economic crisis. Indeed, as technology increasingly advances, in terms of its capabilities in intruding upon privacy, collecting and analysing personal data and conducting mass surveillance, I believe the right to privacy will equally become more and more significant.

It is perhaps during crises, particularly as a result of a major terrorist attack, that governments (and citizens) are more likely inclined to support the further development and deployment of technologies capable of safeguarding security. And, in a

¹ The Society for Worldwide Interbank Financial Telecommunication (SWIFT) manages a global network for exchanging financial messages necessary for facilitating the execution of payment orders/transactions between financial institutions. The US-EU SWIFT agreement allows for the transfer of SWIFT transaction information from the EU to the US.

post-9/11 world, this has indeed occurred. However, the same technologies are often also capable of seriously intruding upon privacy and other civil liberties.

It is important to note that I am certainly not against technology, nor against any governments using technology for maintaining a secure and productive society. I fully support the use of advanced technology, for example, by democratic governments to hunt for terrorists and prevent a terrorist attack, and I recognize that governments are using surveillance technologies to make us safer. They are doing a good job at it. This book does not serve to scaremonger and nor does it argue for the absolute prohibition of surveillance technologies or any other technology capable of invading privacy (i.e., Privacy-Invasive Technologies or PITs). I also would like to mostly avoid the social and moral criticism of the rapid development and deployment of PITs. Without arguing against the deployment of PITs, I think we should instead focus primarily on addressing the legal issues at hand and on proposing practical solutions for ensuring that privacy/liberty is always upheld.

The book, instead, serves to point out both the desirable societal benefits and undesirable privacy threats of the latest (privacy-invasive) technologies and to recommend how to prevent those threats. I am a technology enthusiast and a supporter of the vast and continuously growing number of digital services (e.g. Google maps, Twitter, etc.) available now online. These are great services. I also especially recognize the infinite possibilities and benefits of technology for society and its well-being. Indeed, for example, the advancement of ICT can address major global societal challenges and provide benefits in terms of commerce, health, mobility, democratic participation, social inclusion, environment and convenience. I am aware that technologies can help governments to serve citizens. Governments use ICT to enhance public security and personal safety and to save lives, for instance, by providing communication capabilities and vital information to first responders, such as digital maps, driving directions, medical information and images. Governments can also use identification technologies, advanced imaging technologies and technologies capable of mass surveillance for better ensuring public/national security. Technology can help us achieve a utopian society.

However, as technology rapidly advances and becomes ever more pervasive, the way and degree to which privacy and liberty may be violated also advances. The right to privacy is becoming ever more difficult to enforce. This has led some to argue that privacy (at least as we know it) will end in the near future, if we do nothing about it (Garfinkel 2001), or is already on its way to ending (Whitaker 2000; Holtzman 2006; O'Hara and Shadbolt 2008), or even has already ended so get over it,² and besides what is the use of doing anything about it. At the Centre for Law in the Information Society (eLaw@Leiden), Bart Schermer more specifically argues that privacy will cease to exist in 20 years (2007, 2010). All the same,

² For example, Scott McNealy, the former CEO of Sun Microsystems, famously once declared, over a decade ago, "You have zero privacy anyhow, get over it". see Sprenger P. "Sun on Privacy: 'Get over it'", *Wired*, 26 January, 1999, available at: <http://www.wired.com/politics/law/news/1999/01/17538>

there is also the strong disbelief that privacy can be concretely ensured in the near future. For some, therefore, the end of privacy and the right thereof is simply inevitable. Accordingly, technology can be used to create a dystopian society.

For these reasons, now more than ever, I believe it is time to thoroughly tackle the great challenges and threats posed by the latest technologies on the right to privacy and other civil liberties, and to thwart the prediction that privacy will end soon. I, for one, also believe that the immense benefits of technology do not have to come at the undesirable expense of privacy and other liberties. A balanced approach is both desirable and possible.

Using all available means and approaches, we must aim to safeguard both privacy/liberty and security in the twenty-first century. If we fail to do so, then we are indeed not just “sleepwalking into a surveillance society” (to quote the UK’s former Information Commissioner, Richard Thomas) but, are rather entering into a nightmarish, dystopian, Orwellian future—which has already begun.

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