03. Conceptualizing & Measuring Privacy

Blase Ur
April 9th, 2019
CMSC 23210 / 33210
Logistics

- Problem Set 2 has been released
- Project preference forms to be released later today
- We’ll be switching around a few classes later in the quarter
- We’ll catch up on Lecture 1 leftovers sometime soon
Conceptualizing & Measuring Privacy
Privacy is Hard to Define

“Privacy is a value so complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings, that I sometimes despair whether it can be usefully addressed at all.”

Michael Wolf- The Transparent City
“Chicago has recently undergone a surge of new construction…In early
2007, the Museum of Contemporary Photography…invited Michael Wolf
as an artist-in-residence….Wolf chose to photograph the central
downtown area, focusing on issues of voyeurism and the contemporary
urban landscape….his details are fragments of life—digitally distorted
and hyper-enlarged—snatched surreptitiously via telephoto lenses
http://aperture.org/shop/the-transparent-city/
Michael Wolf- The Transparent City
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Michael Wolf- The Transparent City
Michael Wolf- The Transparent City
THE RIGHT TO PRIVACY.

“It could be done only on principles of private justice, moral fitness, and public convenience, which, when applied to a new subject, make common law without a precedent; much more when received and approved by usage.”

WILLIS, J., in Millar v. Taylor, 4 Burr. 2304, 2312.

THAT the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only
Warren and Brandeis’s Inspiration
Warren and Brandeis’s Argument

• “The individual shall have full protection in person and in property”

• The legal basis for fear
  – Battery → assault
  – Tangible property → intangible property

• Gossip pages about high society
Warren and Brandeis’s Argument

• Libel and slander are insufficient in considering only damage to reputation
• Considers property rights
• The right to prevent, rather than profit from, publication
• “The right to be let alone”
• Excludes topics of general interest
# Photography Laws

<table>
<thead>
<tr>
<th>Country</th>
<th>Take a picture</th>
<th>Publish a picture</th>
<th>Commercially use a published picture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>No</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>Argentina</td>
<td>No</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>Australia</td>
<td>No (with exceptions)</td>
<td>No (with exceptions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Austria</td>
<td>No</td>
<td>No (with exceptions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Belgium</td>
<td>No</td>
<td>Yes (with exceptions)</td>
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</tr>
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<td>Brazil</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Canada</td>
<td>Depends on province</td>
<td>Yes (with exceptions)</td>
<td>Yes</td>
</tr>
<tr>
<td>China</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>Denmark</td>
<td>No</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>No</td>
<td>Yes (with exceptions)</td>
<td>Yes</td>
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<tr>
<td>Finland</td>
<td>No</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>France</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
<td>Yes</td>
</tr>
<tr>
<td>Germany</td>
<td>No (with exceptions)</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>Greece</td>
<td>No</td>
<td>No</td>
<td>Yes (with exceptions)</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>Depends on circumstances</td>
<td>Depends on circumstances</td>
<td>Depends on circumstances</td>
</tr>
<tr>
<td>Hungary</td>
<td>Yes (with exceptions)</td>
<td>Yes (with exceptions)</td>
<td>Yes</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Depends on circumstances</td>
<td>Depends on circumstances</td>
<td>Depends on circumstances</td>
</tr>
<tr>
<td>United States</td>
<td>No</td>
<td>No</td>
<td>Usually (although laws differ by state)</td>
</tr>
</tbody>
</table>

[https://commons.wikimedia.org/wiki/Commons:Photographs_of_identifiable_people#The_right_of_publicity](https://commons.wikimedia.org/wiki/Commons:Photographs_of_identifiable_people#The_right_of_publicity)
Is Being “Let Alone” Sufficient?

“Every secret of a writer's soul, every experience of his life, every quality of his mind, is written large in his works.”

~ Virginia Woolf
Privacy as Control / Secrecy (1967)

“Privacy is the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.”

“…each individual is continually engaged in a personal adjustment process in which he balances the desire for privacy with the desire for disclosure and communication….”

Alan Westin, Privacy and Freedom, 1967
Is Limiting Access Sufficient?

• Individuals sometimes prefer to be let alone, yet sometimes want to be social
  – Privacy was traditionally “social withdrawal”
Privacy Regulation Theory (1975)

- Irwin Altman (social psychology)
  - Preceded by Altman and Taylor’s Social Penetration Theory (1973) about intimacy in relationships

- Dialectic and dynamic process of boundary regulation
  - Continuous movement on a continuum

- Goal: optimum balance of privacy and social interaction
CPM Theory (1991)

- Sandra Petronio (communications)
  - Communication Privacy Management Theory
- Regulate boundaries based on perceived costs and benefits
  - Movement on a continuum
- Expect rule-based management
- Boundary turbulence related to clashing expectations
Is Regulating Disclosure Enough?
Patients trusted Johns Hopkins gynecologist who allegedly videotaped them

By Brigid Schulte and Peter Hermann  February 19, 2013  Email the author

For more than two decades, women came to see Johns Hopkins gynecologist Nikita Levy and trusted him with not only the most private parts of their bodies but also with their innermost secrets. Listening to problems with husbands and boyfriends, the joys and frustrations of motherhood, Levy was a caring confidant, said patients and co-workers.

On Tuesday, they were reeling from the news that their doctor had committed suicide after being accused of surreptitiously videotaping and photographing many of his patients. Police said they have removed nearly 10 image-filled computer hard drives from Levy’s home in Towson, Md.
For 25 years, Dr. Nikita Levy ran an obstetrics and gynecology practice out of the East Baltimore Medical Center, a community clinic run by the Johns Hopkins Hospital and Health System. Last February, Johns Hopkins authorities discovered that Levy had been secretly filming his patients in the examination room, using cameras embedded into pens that he wore around his neck and key fobs he carried in his pockets. At his home, police found hard drives and servers stocked with thousands of videos and photographs of his patient’s naked bodies, snapped under the auspices of performing routine pelvic examinations.
Purpose Matters (?)
Privacy as Contextual Integrity (2004)

- Helen Nissenbaum (philosophy)
- “Contextual integrity ties adequate protection for privacy to norms of specific contexts, demanding that information gathering and dissemination be appropriate to that context.”
Privacy as Contextual Integrity

• Appropriate flows of information
• Appropriate flows conform to contextual information norms
• Norms refer to the data subject, sender, recipient, information type, and transmission principle
• Conceptions of privacy evolve over time and are grounded in ethics
Dan Solove’s Pluralistic Conceptions

• Some data isn’t “sensitive,” but its collection and use impact privacy
  – Impact power relationships
  – Kafka-esque

• Solove’s privacy taxonomy
  – Information collection
  – Information processing
  – Information dissemination
  – Invasion
Important terms

- **Chilling effect**: discouragement of exercising a legitimate right
- **Privacy paradox**: behaviors are inconsistent with concerns
- **Privacy by design**: consider privacy throughout the lifecycle of a product
- **Secondary use**: those other than the intended purpose
Issues of privacy

- Can conflict with free speech / security
- How do we quantify privacy harms?
- Can we measure chilling effects?
- How do we provide transparency?
- Distortion: false or misleading information
- Data mining → future activities?
- Oversight and accountability
Right to be forgotten

• Should a person have the agency to cause items from the past to be removed?
• Who owns information?
• EU GDPR includes a “right to erasure.”
How does each goal relate to privacy?

**I want to have…**
- Solitude, uninterrupted
- Unseen, unheard, unread
- Not talked about
- Not judged
- Not profiled, not targeted, not treated differently than others
- Not misjudged
- Free to try, practice, make mistakes, self-reflect
- Not surprised (contextual integrity)
- Not accountable

**I want to be…**
- Not required to reveal
- Unknown
- Forgotten
- Intimacy
- Control
- Boundaries
- Identity
- Security
- Safety
- Others?
Measuring privacy

• Why is privacy hard to measure?
• Why are attitudes about privacy hard to measure?
• Why is the cost of privacy invasion hard to measure?
How privacy is protected

• Laws, self regulation, technology
  – Notice and access
  – Control over collection, use, deletion, sharing
  – Collection limitation
  – Use limitation
  – Security and accountability
Privacy laws around the world

• US has mostly sector-specific laws, minimal protections, often referred to as “patchwork quilt”
  – No explicit constitutional right to privacy or general privacy law
  – Some privacy rights inferred from constitution
  – Narrow regulations for health, credit, education, videos, children
  – FTC investigates fraud & deceptive practices
  – FCC regulates telecommunications
  – Some state and local laws

• Data Protection Directive - EU countries must adopt similar comprehensive laws, recognize privacy as fundamental human right
  – Privacy commissions in each country
OECD Fair Information Principles

- Collection limitation
- Data quality
- Purpose specification
- Use limitation
- Security safeguards
- Openness
- Individual participation
- Accountability

http://www.privacyrights.org/ar/fairinfo.htm
US FTC’s Fair Information Practice Principles (FIPPs)

- Notice / Awareness
- Choice / Consent
- Access / Participation
- Integrity / Security
- Enforcement / Redress

https://en.wikipedia.org/wiki/FTC_Fair_Information_Practice