



# RIGHT TO PRIVACY AND DIGITAL SURVEILLANCE

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## INTRODUCTION

Digital footprints can be found everywhere. You release personal information into cyberspace each time you visit a website, enter your personal information, credit or debit card information, sign up for an account, send an email, fill out online forms, post on social media, or store images or documents in cloud storage. There are many different types of cyberattacks, all of which aim to steal or misuse personal information (PI). In response to the increasing complexity of intrusions, additional internal and regulatory safeguards are required. As more and more people access the internet, there is a sense that they are under constant surveillance or that they are at risk of losing their privacy. Empowerment and the ability to choose which information is collected and monitored are both aspects of privacy and surveillance.

## RIGHT TO PRIVACY

The UN Declaration of Human Rights, the International Convention on Civil and Political Rights, and numerous other international and regional treaties recognize privacy as a fundamental human right. Human dignity and other important values like freedom of speech and association are based on privacy. It has emerged as one of the modern era's most pressing human rights issues. Human dignity and other values like freedom of speech and association are safeguarded by privacy. It has emerged as one of the modern era's most significant human rights. It is possible to divide it into the following aspects:

- Information Privacy, which entails establishing guidelines for the collection and use of personal information like credit card numbers and medical records;

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- bodily privacy, which entails safeguarding individuals' physical selves from invasive procedures like cavity searches and drug testing;
- Communications privacy, which includes the safety and privacy of email, phone calls, and other forms of communication; and
- Territorial privacy, which entails restricting access to the home and other environments like the workplace or public space<sup>2</sup>. Privacy is a fundamental human right, but it is not an absolute right.

The Justices of the Peace Act of 1361 in England established the privacy law.<sup>3</sup> In 1765, British Lord Camden invalidated a warrant to enter a house and seize documents, writing, "We can safely say there is no law in this country to justify the defendants in what they have done;" Papers are frequently the most valuable possession a man can possess, so if there were one, it would destroy all of society's comforts. "The poorest man may in his cottage bid defiance to all the force of the Crown," Parliamentarian William Pitt wrote. It might be weak; Its roof might move; It could be blown through by wind; The storms might arrive; The rain can enter, but not the King of England; The destroyed tenement's gate prevents all of his troops from entering. "<sup>4</sup>

Over the centuries that followed, distinct privacy safeguards were developed by a number of nations. The "Access to Public Records Act"<sup>5</sup> was enacted in 1776 by the Swedish Parliament, requiring that all information held by the government be used for legitimate purposes. The Declaration of the Rights of the Man and the Citizen of 1792 stated that private property is sacred and inviolable. In 1858, France imposed severe penalties for publishing private facts.<sup>6</sup> American lawyers Samuel Warren and Louis Brandeis wrote a seminal piece on the right to privacy as a tort in which they referred to privacy as "the right to be left alone."<sup>7</sup> The 1948 Universal Declaration of

<sup>2</sup> Gilc.org. (2020). *Privacy and Human Rights - Overview*. [online] Available at: <http://gilc.org/privacy/survey/intro.html> [Accessed 19 Aug. 2020].

<sup>3</sup> Thombre, S.P. (2019). Comprehensive study of Development of right to privacy in India with special reference to constitutional provisions. *International Journal of Law*, [online] 5(6), pp.117–122. Available at: <http://www.lawjournals.org/archives/2019/vol5/issue6/5-6-43> [Accessed 19 Aug. 2020].

<sup>4</sup> speech, March 1763, in Lord Brougham *Historical Sketches of Statesmen in the Time of George III* First Series (1845) vol. 1

<sup>5</sup> Chydenius's Legacy Today, A. (n.d.). *The World's First Freedom of Information Act*. [online] Available at: [https://www.accessinfo.org/wpcontent/uploads/worlds\\_first\\_foia.pdf](https://www.accessinfo.org/wpcontent/uploads/worlds_first_foia.pdf) [Accessed 19 Aug. 2020].

<sup>6</sup> The Rachel affaire. Judgment of June 16, 1858, Trib. pr. inst. de la Seine, 1858 D.P. III 62. See Jeanne M. Hauch, Protecting Private Facts in France: The Warren & Brandeis Tort is Alive and Well and Flourishing in Paris, 68 Tul. L. Rev. 1219 (May 1994).

<sup>7</sup> Warren and Brandeis, *The Right to Privacy*, 4 Harvard L.R. 193 (1890)

Human Rights, which specifically protected communications and territorial privacy, serves as the international standard for modern privacy. According to Article 12,

Attacks on one's honor or reputation, as well as arbitrary interference with one's privacy, family, home, or correspondence, should never be tolerated. Several international human rights covenants specifically mention privacy as a right, and everyone has the right to the protection of the law against such interferences or attacks. The language of the UN Convention on the Rights of the Child, the UN Convention on Migrant Workers, and the International Covenant on Civil and Political Rights (ICCPR) is identical.

## RIGHT TO PRIVACY ONLINE

There is a sense of being under constant surveillance or a fear of losing privacy as an increasing number of people come online.<sup>8</sup> Many people do not understand privacy, and some even question its very existence. Even though the use of personal information for internet services carries risks, as recently became apparent, these activities—such as browsing the Internet, posting on the walls of our friends, tweeting, uploading pictures, shopping, and watching videos online—leave traces of data everywhere.<sup>9</sup> These threats come from both private and public entities. The United Nations Human Rights Council stated in 2012 that freedom of expression online is a fundamental human right, implying that individuals' offline rights must also be safeguarded online.<sup>10</sup> U.N. Human Rights Council: The first resolution on internet freedom of speech states as follows:

1. affirms that, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the same rights that people have offline must also be protected online, particularly freedom of

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<sup>8</sup> S, A.R. (2016). *Online Privacy and Encryption*. [online] Internet Freedom Foundation. Available at: <https://internetfreedom.in/issues-privacy/> [Accessed 19 Aug. 2020].

<sup>9</sup> MediaSmarts. (2012). *The Internet, surveillance, and privacy*. [online] Available at: <https://mediasmarts.ca/privacy/internet-surveillance-privacy> [Accessed 20 Aug. 2020].

<sup>10</sup> Loc.gov. (2012). *U.N. Human Rights Council: First Resolution on Internet Free Speech | Global Legal Monitor*. [online] Available at: <https://www.loc.gov/law/foreign-news/article/u-n-human-rights-council-first-resolution-on-internet-free-speech/> [Accessed 19 Aug. 2020].

expression, which applies across borders and through any media of one's choice; [and]

2 recognizes that the Internet's global and open nature is a driving force in accelerating development in all its forms;<sup>11</sup>

The internet and other digital technologies of today greatly enhance our day-to-day lives. Our dependence on them will only increase over time. The personal data that these services collect from each individual must be kept. Secure communications can largely accomplish this.<sup>12</sup> In many nations, the idea has been combined with data protection, which interprets privacy in terms of managing personal information. Privacy protection is frequently viewed outside of this context, in rather strict circumstances, as a means of limiting the extent to which society may intervene in an individual's life.<sup>13</sup> The absence of a single definition does not imply that the issue does not have significance. The Cambridge Analytica drama is the latest in a series of eruptions that have caught people's attention in ways that a steady stream of data breaches and misuses of data have not.<sup>14</sup> Individual control over information about oneself is more difficult than ever before because others can access and link the databases and there are few controls on how they use, share, or exploit the information.

## PRIVACY VS. SURVEILLANCE

Privacy is associated with privilege, confidentiality, nonconformity and dissent, shame and embarrassment, the deviant and the taboo, and subterfuge and concealment. Privacy is also associated with liberty. People's on the right track to protection has been confounded with the accentuation on security and the various advancements in reconnaissance and data innovation. In the name of state or national security, people are being asked to give up more and more of their privacy.

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<sup>11</sup> Ibid

<sup>12</sup> S, A.R. (2016). *Online Privacy and Encryption*. [online] Internet Freedom Foundation. Available at: <https://internetfreedom.in/issues-privacy/> [Accessed 20 Aug. 2020].

<sup>13</sup> .Simon Davies, *Big Brother: Britain's Web of Surveillance and the New Technological Order* 23 (Pan 1996). )

<sup>14</sup> CHAPTER 6: RIGHT OF PRIVACY AND INTERNET. (n.d.). [online] Available at: [https://shodhganga.inflibnet.ac.in/bitstream/10603/58938/11/11\\_chapter%206.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/58938/11/11_chapter%206.pdf) [Accessed 20 Aug. 2020].

The majority of Americans believe that businesses and the government regularly track and monitor their online and offline activities.<sup>15</sup> Surveillance and privacy are empowerment and the ability to choose which information is available and collected.<sup>16</sup> Concerns, therefore, frequently center on the fact that this surveillance or collection of information is frequently carried out without our knowledge or consent.<sup>17</sup> The expansion of social networking sites as well as the development of profiling and behavioural tracking systems and their equivalents alter the scope of the information that is available: Information derived from analysis of that information and from our behavior can also become available, in addition to information that we intentionally impart. The nature of the data that can be gathered through surveillance has changed as a result of technological advancements in tandem. The nature of the technology also means that surveillance, which would have been extremely expensive and difficult to implement, is now relatively simple and inexpensive, making it appealing to governments.<sup>18</sup> Surveillance in its new form has implications for human rights beyond the obvious intrusions into people's private lives themselves and the privacy of correspondence, which is one aspect of Article 8 of the European Convention on Human Rights<sup>19</sup>.

the ECHR. The issue of privacy is not the only one; in part, this is due to the fact that privacy supports other rights (particularly rights that are very much not individual, like freedom of association and assembly), and in part, this is due to the nature of the internet and the manner in which we currently use it. Focusing solely on privacy may make the risks of surveillance appear to be less significant than they are, lowering the standards used to determine whether surveillance is legal or not.

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<sup>15</sup> Auxier, B., Rainie, L., Anderson, M., Perrin, A., Madhu Kumar and Turner, E. (2019). *Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information*. [online] Pew Research Center: Internet, Science & Tech. Available at: <https://www.pewresearch.org/internet/2019/11/15/americans-and-privacy-concerned-confused-and-feeling-lack-of-control-over-their-personal-information/> [Accessed 20 Aug. 2020].

<sup>16</sup> A Report on the Surveillance Society For the Information Commissioner, by the Surveillance Studies Network Public Discussion Document. (2006).

<sup>17</sup> Media Smarts(2012). *The Internet, surveillance and privacy*. [online] Available at: <https://mediasmarts.ca/privacy/internet-surveillance-privacy> [Accessed 20 Aug. 2020].

<sup>18</sup> Journal of Cyber Policy. (2016). *Data gathering, surveillance and human rights: recasting the debate*. [online] Available at: <https://www.tandfonline.com/doi/full/10.1080/23738871.2016.1228990> [Accessed 20 Aug. 2020].

<sup>19</sup> Article 8 of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

## CONCLUSION

The development of youth depends on privacy. Children's and young people's notions of self, trust, and authority are impacted by a lack of privacy. In each nation, the legal surveillance system must adhere to a flawless, transparent executive system that can withstand scrutiny. In the best interest of end users, we believe that advanced encryption technologies should be widely adopted and legally recognized in order to ensure the safety of data. From a regulatory standpoint, it is necessary to establish a culture of accountability, particularly when private and public organizations collect and use personal data. When designing and implementing security and surveillance, it is essential to take into account the variety of preferences that are held by different countries and demographic groups.

