The Right to Privacy in the Digital Age

Different International Perspectives

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Introduction

The right to privacy is one of the rights enshrined in international human rights law.

However, with the increasing digitalisation of modern life, protecting one’s privacy has become more complicated. Both state and non-state organisations make frequent interventions in citizens’ private lives.

In this special issue we focused on the right to privacy in the digital age with a view to see how it is implemented across the globe in different jurisdictions.

This special issue is unique because there have not been any publications with similar content covering the issue as extensively as we did. Hence, it is a first in this regard.
`The right to privacy in the digital age: different perspectives around the globe` (The International Journal of Human Rights (Vol 25, Issue 1)).

**International law, surveillance and the protection of privacy**
- Kristian P. Humble

**The current case law of the European Court of Human Rights on privacy: challenges in the digital age**
- Özgür Heval Çınar

**Informational privacy post GDPR – end of the road or the start of a long journey?**
- Aysem Diker Vanberg

**Playing catch up – privacy regimes in South Asia**
- Smitha Krishna Prasad & Sharngan Aravindakshan

**The long arm of GDPR in Africa: reflection on data privacy law reform and practice in Mauritius**
- Alex B. Makulilo

**From privacy to data protection: the road ahead for the Inter-American System of human rights**
- Carlos Affonso Souza, Caio César de Oliveira, Christian Perrone & Giovana Carneiro
The current case law of the European Court of Human Rights on privacy: challenges in the digital age

International Law:

- Article 12 of the UDHR,
- Article 17 of the ICCPR,
- Article 8 of the ECHR,
- Articles 7 and 8 of the European Union (EU) Charter of Fundamental Rights,
- Article 5 of the American Declaration of the Rights and Duties of Man (ADRDM) and article 11 of the American Convention on Human Rights (ACHR).
Article 8 of the ECHR

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
ECtHR Case Law

*Niemitz v. Germany*: [private life] would be too restrictive to limit the notion to an “inner circle” in which the individual may live his own personal life as he chooses and to exclude therefrom entirely the outside world not encompassed within that circle. Respect for private life must also comprise to a certain degree the right to establish and develop relationships with other human beings.

Three categories concerning private life:
1-) ‘Physical, psychological or moral integrity’;
2-) ‘Identity and autonomy’;
3-) ‘Privacy’.
Sample Cases

- S. and Marper v. UK
- Klass and others v. Germany
- Bernh Larsen Holding AS and others v. Norway
- Von Hannover v. Germany (no. 2)
- Friedl v. Austria
- Gaskin v. UK
- Doorson v. Netherlands
- Egill Einarsson v. Iceland
- Tamiz v. UK
- M.L. and W.W. v. Germany
- Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland
- Peck v. UK
- Weber and Saravia v. Germany
- Big Brother Watch and others v. UK
- Z. v. Finland
- Kolyadenko and Others v. Russia
Informational Privacy post GDPR

- Sound data protection law are crucial for protecting human rights including the right to privacy.
- The GDPR is a far-reaching legal instrument relating to collection and use of personal data by private actors, individuals and governments. Arguably, it is crucial for protecting informational privacy.
Article 7 of the Charter states that ‘Everyone has the right to respect for his or her private and family life, home and communications.’

According to both the European Court of Human Rights (ECtHR) and the CJEU the term private life needs to be interpreted broadly.

Article 8 of the Charter asserts that:

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law…….
Informational Privacy post GDPR

Key Data Protection principles

Article 5 comprises seven key principles:
1. Lawfulness, fairness and transparency.
2. Purpose limitation,
3. Data minimisation,
4. Accuracy,
5. Storage limitation,
6. Integrity and confidentiality (security),
7. Accountability.
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Important GDPR Provisions

- Article 4 of the GDPR provides with the definitions
- Article 6 concerns consent before collecting or using a data subject’s data
- Article 25 concerns privacy by design
- Article 13, 14 requires the data processor to communicate certain information to data subjects such as the purpose of data collection
- Article 15 concerns the right of access
- Article 16 concerns accuracy
- Article 17 concerns the right to erasure
- Article 18, 19 concerns right to restrict processing
- Article 20 concerns the right to data portability
- Article 21 concerns the right to object.
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Issues pertaining to the GDPR and informational privacy

- Enforcement issues and potential divergence between member states
- Ambiguity with regards to data subject rights may undermine the enforcement of the GDPR.
- The GDPR does not fully address the imbalance of power between data subjects and data controllers and may need to be supplemented by other laws such as competition law
- It may be early to assess the impact of the GDPR on the right to privacy
Informational Privacy post GDPR

Issues pertaining to the GDPR and informational privacy

• Technological advancements may make some of the provisions of the GDPR redundant
• Even the strongest data protection laws are not sufficient to resolve all issues
• Privacy by design is still far from unfolding its full potential
Informational Privacy post GDPR

Conclusion

- GDPR has been a significant step in the right direction to protect the right to privacy in the online sphere.

- Nevertheless, it must be noted that GDPR merely as a legal instrument is not sufficient to strengthen data protection and enforce informational privacy in the online sphere.
Thank you

Any questions?