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INTERNET PRIVACY RIGHTS

Internet Privacy Rights analyses the current threats to our online autonomy and privacy, and proposes a new model for the gathering, retention and use of personal data. Key to the model is the development of specific privacy rights: a right to roam the internet with privacy, a right to monitor the monitors, a right to delete personal data, and a right to create, assert and protect an online identity. These rights could help in the formulation of more effective and appropriate legislation, and shape more privacy-friendly business models. The conclusion examines how the internet might look with these rights in place and whether such an internet could be sustainable from both a governmental and a business perspective.

PAUL BERNAL is a lecturer in information technology, intellectual property and media law at the University of East Anglia Law School, where his research centres around privacy and human rights, particularly on the internet.

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PREFACE AND ACKNOWLEDGEMENTS

Privacy on the internet has never mattered more. The internet is now part of almost every aspect of our lives, from the personal and intimate to the professional, from our finances to our leisure, from our interactions with each other to our interactions with our governments. It is no longer something optional, something that we can avoid: if we want to live full lives, to participate in society, to take advantage of all our opportunities, we need the internet.

What happens to us on the internet impacts upon our autonomy – our freedom to act, our freedom to decide for ourselves how we live our lives – and not just our autonomy online but our autonomy in the 'real', offline world. Part of this impact arises from the way that our privacy is infringed upon, directly and indirectly, intentionally and unintentionally, by a wide variety of people, companies and government agencies. People are increasingly becoming aware of these problems: internet privacy issues, once of interest to only those loosely described as geeks and nerds, are now headline news all around the world. Internet privacy not only matters, but it is beginning to be seen to matter.

It has been argued that privacy is 'dead', that privacy is 'outdated' and even that privacy is in itself damaging and that we should embrace transparency and openness in its place. These arguments are not trivial or simplistic, and there is evidence to support all of them, but ultimately they are fundamentally flawed. If we want autonomy, if we want freedom, we need privacy to protect it. We need privacy *rights*.

This book presents a linked set of internet privacy rights – rights that, sometimes even without knowing it, people are already starting to claim. These are not 'legal' rights in a precise and enforceable sense, but something more akin to natural rights. They reflect the rights that people *believe* that they have, that people *need* to have in order to function freely on the internet. What these rights are, why they are appropriate and how they could help people and help shape the internet into a more privacy-friendly form in the future is the main purpose of *Internet Privacy Rights*.

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Some people express concern primarily against invasions of privacy by the likes of Google and Facebook, some by government agencies such as the US National Security Agency (NSA) and the UK's Government Communications Headquarters (GCHQ) – particularly in the light of the PRISM, Tempora and related revelations of 2013 – while others seem worried most by criminal scammers and identity thieves. Which of these groups is right? In different ways, each of them has very legitimate concerns, but they cannot be considered separately. The relationships between businesses and governments are complex and intertwined, and criminals and scammers can feed off both. Data gathered by businesses can be accessed and used by government agencies, or hacked or stolen by criminals. Business models based on privacy invasions can be legitimised by governments against the interests of individuals as a result of lobbying, or from the tacit understanding that both businesses and governments can benefit from having more and more information about us.

This is where the rights presented here come in: they can help people to fight their corner. Rights provide a language for people to use, a way to express themselves in the face of what often seems to be the overwhelming power of both the corporate and the security lobbies.

Internet Privacy Rights starts with a theoretical analysis of both privacy and autonomy, and how they apply in the current, substantially commercial form of the internet. It sets out a model – the *Symbiotic Web* – to explain the current, principally commercial way that the internet functions, with individuals dependent on free or discounted services and businesses relying on their ability to gather and use our personal data. This symbiosis is currently essentially beneficial to both individuals and businesses, but there are significant risks attached. Those risks are both analysed theoretically and illustrated through case studies of situations familiar to most people from their everyday experience on the internet. Some of the most common activities on the internet are examined: the use of search engines, the way that behavioural advertising works and so on. The rights suggested in *Internet Privacy Rights* emerge from these case studies: in part as a solution to the problems encountered and in part as a reflection of the way that people, in practice, have responded to those problems.

A number of concepts are introduced in this book: the aforementioned model, the *Symbiotic Web*; *Collaborative Consent*, a new way to look at how to deal with the thorny issue of consent in the online context; *Autonomy by Design*, taking privacy by design a stage further; *Disclosure Minimisation*, a privacy-friendly way of looking at the assertion and

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verification of identity; and *Surveillance Minimisation*, addressing the rising issue of government surveillance of the internet. Each of these concepts addresses potentially critical issues that arise from an examination of how the internet currently functions: *Internet Privacy Rights* looks at the internet from both a conceptual and a pragmatic perspective.

This book is a development of the work that I undertook for my PhD thesis at the London School of Economics, and some of the ideas in this book have previously been published (Bernal, 2010a, 2010b, 2011a, 2011b). I should like to thank the LSE and the Arts and Humanities Research Council who provided the funding for the research, and in particular my two excellent PhD supervisors Professor Conor Gearty and Professor Andrew Murray. The central premise of this book joins their two fields – human rights and internet law – and without their expertise, encouragement and support this book would never have been written. I should also like to thank Professor Alastair Mullis whose support at the UEA was invaluable, and my other excellent colleagues at the UEA Law School. Most of all, I would like to thank my daughter Alice for keeping me grounded and reminding me what really matters, and my wife Corina for emotional support, vital assistance with editing and proofreading, and much, much more.

The internet world – particularly insofar as it concerns privacy – is in a state of flux. At the time of writing, that world was still reeling from Edward Snowden's whistle-blowing over PRISM, surveillance and censorship laws and rules were being implemented or contemplated all over the world, and Europe was in the throes of an almost tortuous reform process over data protection. Predicting the future is, as a consequence, fraught with danger. I am not what Morozov might describe as a cyber-utopian, but neither am I a full-fledged 'cyberdystopian', seeing the internet either now or in the future primarily as a tool for authoritarianism and control. The research into internet privacy that is the background to this book reveals a great many problems, some of which seem almost to be insurmountable, but it also reveals some progress, both in practice, with 'victories' for those supporting privacy, and also a significant improvement in awareness of privacy issues. The internet is not, by any stretch of the imagination, 'privacy-friendly' at present – but that does not mean that it is impossible for it to become, at least in some ways, more privacy-friendly.

I believe an improvement might be possible. Whether it will happen is another question entirely. It is very hard to tell, and there are signs in both positive and negative directions. In some ways I suspect a more

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privacy-friendly internet is inevitable – the more we know, the more we seem to care, and ultimately companies and governments have to take account of that. At the moment, however, that seems to be a very long way away, but it is of great importance for anyone interested in autonomy and freedom, and not just on the internet.

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