

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

INDEX

- anonymity
 - pros and cons, 398–405
 - social media, issues with, 405
 - young people, 229–30
- anonymity orders
 - Australia, 26, 373–85
 - interim injunctions in conjunction with, 26, 391–8
 - United Kingdom, 26, 385–98
- Anti-Social Behaviour Orders (ASBOs)
 - characteristics, 233–7
 - privacy issues, 20
 - publicity issues, 237–57
 - use of surveillance technologies, 20
- APEC Cross-border Privacy Enforcement Arrangement, 6, 12, 43, 134
- appeals
 - against decision of Privacy Commissioner, 54–5
- ASBOs, *see* Anti-Social Behaviour Orders
- Asia Pacific Privacy Authorities (APPA) Forum, 42
- Australia
 - anonymity orders, 26, 373–85
 - credit reporting rules, 53
 - determinations, 37–8, 54–5
 - direct marketing use of personal information, 52–3
 - Do Not Call Register Act 2006, 57–8
 - exemptions from the Privacy Act 1988, 55
 - health privacy-negative initiatives, 56–7
 - identity management initiatives, 57
 - notification of data breaches, 39–40, 59
 - online privacy, 346–51
 - Privacy Act 1988 (Cth), 6, 31, 33, 45, 210–11, 344–7
 - Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth), 6, 24, 31, 34–5
 - Privacy Commissioner, 6, 7–8, 35, 37, 49, 51, 53–5
 - privacy law reform process, 7–8, 24, 33–41, 50–5, 344–8
 - privacy standards, 4
 - Prohibited Behaviour Orders (PBOs), 20, 236–7, 241
 - Spam Act 2003 (Cth), 57–8
 - statutory cause of action for serious invasion of privacy, 44–5, 58
 - surveillance regulations, 19, 208–12
 - voluntary privacy codes, 53
- body searches, 78
- Brandeis, Louis D., 31–2, 160–1, 338–9
- breach of confidence
 - privacy distinct from confidentiality, 17, 174–8
 - privacy law in the UK, 221–3, 411, 412
- Canada
 - data protection laws, 343–4
 - human rights legislation, 3
- Caroline, Princess
 - privacy case, 10–11, 83–4
- CCTV, 204, 219, 225–6

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

442

INDEX

- celebrities
 - English privacy law, 182–3
 - Leveson Report on press conduct, 189–95, 197–8
- children, *see also* Anti-Social Behaviour Orders
 - English privacy law, 186–8
 - identity suppression, 383–4
 - Leveson Report on treatment by the press, 192
- China
 - pressure to comply with Convention 108, 137
- ChoicePoint, 36
- cloud computing
 - EU and German data privacy law, 24–5, 356–66
 - European rules, 357–66
 - legal challenges, 355–6, 366–8
 - terminology and characteristics, 354–5
- communication
 - privacy notices, 47–8
 - privacy policies, 42
 - protection under Art. 7 of the EU Charter, 87–8
- complaints
 - determinations in Australia, 37–8, 54–5
- computer hacking
 - unwanted access to personal documents and files, 147–8
- Computer Misuse Act 1990 (UK), 148
- confidentiality, *see also* breach of confidence
 - privacy distinct from, 174–8
- Convention for the Protection of Human Rights and Fundamental Freedoms, 3, *see* European Convention on Human Rights (ECHR)
- Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108), 12–14
- accession by non-European states, 101–20, 127–8
- accession process, 107–10
- Additional Protocol, 12, 95–101
- advantages for European states in non-European accessions, 118–19
- background, 92–4
- compared with other international instruments, 94–5
- cross-border issues, 98–9, 110–12, 129–35
- enforcement shortcomings, 99–101
- European Court of Human Rights (ECtHR) remedy not available, 100, 116
- future of, 135–9
- globalisation time frame, 119–20
- history, 95–6
- implications and advantages of accession for non-European states, 117–18
- issues with interoperability and mutual recognition of agreements and standards, 133–5
- modernisation, 120–9
- Morocco accession request, 105–7
- standards, 97–8, 124–6
- status, 96–7, 129
- unresolved accession issues, 112–17
- Uruguay accession, 104–5
- correspondence
 - protection under ECHR art. 8, 87–8
- Council of Europe, 62, *see also* Conventions
- court proceedings
 - anonymity orders, 26, 373–98, 403
 - injunctive relief and privacy and defamation actions overlap, 27, 422–38
- credit reporting
 - determination of complaint against agency, 37–8
 - rules in Australia, 53
- Criminal Justice and Police Act 2001, 147
- damages
 - level of compensation in England, 188–9
 - Leveson Report, 195–7
 - versus interim injunctions, 416–17
- data breaches
 - notification in Australia, 39–40, 59

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

INDEX

443

- reputational damage, 42
- Sony PlayStation Network, 6, 36–7
- Telstra Corporation Ltd
 - investigation, 38–9
- USA and UK, 36–7
- data controller, 48–9, 152–3, 333
 - proposed EU Regulation, 333
- data processing, 48–9, 151–5
 - household exemption in proposed EU Regulation, 324–6
- data protection, *see also* personal
 - data; physical privacy; privacy protection; right to be forgotten debate
 - common law jurisdictions, 158
 - cross-border issues, 6, 9, 13, 43–4, 49, 70, 98–9, 110–12, 129–35
 - EU privacy law reform process, 8–10, 65–71
 - European Convention on Human Rights (ECHR), 4, 8, 10, 80–2
- Data Protection Act 1998 (UK), 14, 151–5, 218–21
- data security
 - breaches USA and UK, 36–7
 - challenges, 41–2
- defamation actions
 - Bonnard v. Perryman* rule, 418–22
 - effect of Human Rights Act 1998 (UK), 420–2
 - misuse of private information
 - distinct from, 418–19
 - overlap with privacy actions
 - regarding injunctive relief, 27, 422–38
- determinations
 - Australia, 37–8, 54–5
- Diana, Princess, 77
- direct marketing
 - use of personal information in
 - Australia, 52–3
- DNA samples
 - legal decisions on retention, 81–2
- doorstepping offence, 147
- emails
 - protection under Art. 7 of the EU Charter, 87–8
- enforcement of privacy laws
 - Australia, 6, 7–8, 35, 37–8, 49, 51, 53–5
 - Convention 108, 99–101
 - importance of, 9–10
 - proposed EU Regulation to
 - emphasise, 69–70
 - regulator effectiveness, 59–60
 - USA and UK, 36–7
- equity
 - treating privacy as a right in equity, 17, 174–8
- ethics of the press, *see also* Leveson Report
 - cloud computing data privacy
 - law, 24–5
 - online privacy compared with US, 24, 280–2
- European Charter of Fundamental Rights, 8, 10, 64–6
- communication, 87–8
- European Union
 - Data Protection Directive 95/46/EC, 8, 64, 65, 82, 260, 267–71, 275–6, 300–2, 308–16, 357–60
 - Data Retention Directive, 361–2
 - Directive on Privacy and Electronic Communications, 360–1
 - E-commerce Directive, 330–1
 - General Data Protection Regulation (GDPR), 8–9, 25, 66–71, 274–7, 288–9, 290–3, 311–31, 362–4
 - European Convention on Human Rights (ECHR), 3, 4, 8, 10, 62, 75–6, 385–8, 426–9
 - Art. 8 as a qualified right, 88–9
 - correspondence, 87–8
 - family life, 8
 - home, 86–7
 - positive obligations, 88–9
- European Court of Human Rights (ECtHR), *see also* European Convention on Human Rights
- European Union
 - cloud computing data privacy law, 356–66
 - data privacy law reform process, 8–10, 65–71
 - development, 63

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

444

INDEX

- European Union (*cont.*)
 - online privacy compared with US, 341–3
 - online privacy rules, 357–66
- Facebook, 1, 14, 24, 138, 342–3
 - penalty for privacy misconduct, 36
- family life
 - protection under ECHR art. 8, 85–6
- filming
 - unwanted watching and/or visual recording, 145–7, 155–6, 221–3
- fingerprints
 - legal decisions on retention, 81–2
- freedom of expression online, 299–302
- freedom of speech/press
 - media organisations in actions for privacy breaches and defamation, 27, 417
 - Princess Caroline case, 10–11, 83–4
 - Section 12 Human Rights Act 1988, 413–14
 - versus privacy protection, 17–19
- Gellman, Robert, 1
- Germany
 - cloud computing data privacy law, 24–5, 356–7, 364–6
 - human rights protection in constitution, 3
 - Princess Caroline privacy case, 10–11, 83–4
- Global Privacy Enforcement Network, 6, 43, 70
- Google, 1, 14, 24, 138
 - inquiries into data breaches, 343
 - privacy policy, 42–3
- GPS technologies, 204–5
- harassment, 147, 149–51, 198
- health privacy, 56–7
- home
 - protection under ECHR art. 8, 86–7
- Hong Kong Data Protection Ordinance, 344
- HSBC Bank, 36
- human rights, *see also* European Charter of Fundamental Rights; European Convention on Human Rights (ECHR), International Covenant on Civil and Political Rights (ICCPR)
 - constitutional protection, 3
 - legislation, 3–4
 - privacy recognised as, 3–5, 8, 10, 15, 32–3, 76–8
 - treaties and conventions, 3–5, 8
- Human Rights Act 1998 (UK), 3–4, 26, 385, 409–10, 420–2
 - Section 12, 413–14
- identity, *see also* anonymity
 - ambiguity concerning IP address, 21, 266–7, 274–5, 283–7
- Individual Health Identifiers (IHIs)
 - in Australia, 56–7
- legislative prohibitions in Australia, 383–5
- management initiatives in Australia, 57
- pros and cons of anonymity, 398–405
- right to protection, 78–9
- information privacy
 - Data Protection Act 1998 (UK), 14, 151–5, 218–21
 - Germany, 356–7
 - Privacy Act 1988 (Cth), *see* Privacy Act 1988 (Cth)
- injunctions, interim, *see* interim injunctions
- integrity
 - right to protection, 78–9
- interim injunctions
 - application for, 389–90
 - balance of convenience test, 415–18
 - gauging likelihood of success at trial, 414–15
 - implications of Section 12 Human Rights Act 1988 (UK), 413–14
 - in conjunction with anonymity orders, 26, 391–8
 - John Terry case, 423–4
 - media organisations, 413–14, 417
 - overlap between privacy and defamation actions, 27, 422–38
 - significance of, 411–12
 - versus damages remedies, 416–17

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

INDEX

445

- International Covenant on Civil and Political Rights (ICCPR), 3, 32–3, 116
- Internet, *see also* cloud computing; online privacy
 - application of data privacy terminology, 21–2, 262–71
 - intermediaries, 330–1, 333–7
 - Leveson Report response to press arguments regarding material already on the Net, 194–5
 - surveillance, 283–7
 - tensions between ‘open’ logic and data privacy law, 22, 271–90
 - US data privacy policy, 277–82
- Internet Service Provider (ISP)
 - Data Retention Directive, 361–2
 - whether IP address amounts to personal data, 21, 266–7, 274–5, 283–7
- intrusion on seclusion, *see also* physical privacy; privacy protection
 - manner of protection, 14–16
 - UK laws, 14–16
- investigations
 - privacy breaches, 38–9
 - Telstra Corporation Ltd, 38–9
- letters
 - protection under Art. 7 of the EU Charter, 87–8
- Leveson Report, 141–2
 - background, 180–1
 - damages, 195–7
 - impact on privacy law, 18–19, 197–9
 - treatment of privacy, 189–92
 - treatment of the press arguments, 192–5
- Lisbon Treaty, 8, 10, 64–6
- litigants
 - anonymity, 26, 398–405
- Malaysia Personal Data Protection Act, 344
- marketing
 - Australian action on unsolicited, 57–8
- mass media
 - declining standards, 3
- media
 - anonymity orders, 26, 403–4
 - freedom of speech issues, 27
 - interim injunctions, 413–14, 417
 - Leveson Report, 18–19, 141–2, 180–1, 189–95
 - Princess Caroline case, 10–11, 83–4
 - protection of privacy legal cases, 10–11
 - surveillance in Australia, the UK and the US, 224–5
- medical records
 - violation of Art. 8 ECHR case, 90
- misuse of personal information
 - action overlap with defamation, 27, 422–38
 - defamation actions distinct from, 418–19
 - Leveson Report, 18–19, 141–2, 180–1, 189–95
 - UK court decisions, 410–11
- Morocco
 - request for accession to Convention 108, 105–7
- naming, *see* anonymity; identity
- national security, 81
 - ECHR Art. 8 as a qualified right, 88–9
- New Zealand
 - data protection laws, 343–4
 - human rights legislation, 3
- notification
 - data breaches in Australia, 39–40, 59
- OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, 12, 45, 63, 134
- online privacy
 - Australia, 346–51
 - cross-border issues, 9, 49, 70
 - Europe and USA compared, 24, 280–2, 341–3
 - European rules, 357–66
 - freedom of expression, 299–302
 - social media, 2–3, 22–3, 312–13, 323–31, 333–7

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

446

INDEX

- penalties
 - data breaches USA and UK, 36–7
- personal data, *see also* Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Convention 108); data breaches; data protection; misuse of personal information; physical privacy; right to be forgotten debate
 - ambiguity concerning IP address, 21, 266–7, 274–5, 283–7
 - cloud data rules in the EU and Germany, 24–5, 356–66
 - definition, 218–19
 - online sources, 7
 - persistent online data debate, 22–3, 293–6, 312–13, 323–31, 333–7
 - processor's obligations, 151–5
 - protection by European Charter of Fundamental Rights, 10, 65–6
 - protection under ECHR, 80–2
 - right to erasure, 306–11
 - social media privacy issues, 2–3
 - unwanted access to personal documents and files, 147–8
 - use in direct marketing in Australia, 52–3
- Personal Data Protection Act 2012, 344
- phone calls,
 - see also* telecommunications
 - bugging, 87–9, 144–5, 156, 208, 217–18
 - protection under Art. 7 of the EU Charter, 87–8
- photography
 - ECtHR cases, 11, 83–4
 - Leveson Report on press intrusion, 191–2, 194
 - unwanted visual recording, 145–7, 221–3
- physical privacy, 78–9,
 - see also* surveillance
 - harassment, 147, 149–51, 198
 - international developments, 142
 - United Kingdom legislation, 143–51
 - unwanted access to personal documents and files, 147–8
 - unwanted access to private space or belongings, 148–9
 - unwanted listening and/or audio recording, 87–9, 144–5, 156, 208, 217–18
 - unwanted watching and/or visual recording, 145–7, 204, 221–3
- press, *see also* mass media; media
 - Leveson Report, 18–19, 141–2, 180–1, 189–95
- privacy
 - distinct from confidentiality, 17, 174–8, 412
 - human right, 3–5, 8, 10, 15, 32–3, 76–8
 - invasive technologies, 1–3, 19–20, 31–2, 204–5, 208–10, 295–6
 - meaning, 1–3, 15–16
- Privacy Act 1988 (Cth)
 - exemptions, 6, 55, 344
- privacy codes
 - Australia, 53
- privacy notices, 47–8
- privacy policies, 42
 - Google, 42–3
- privacy protection, *see also* data protection; injunctions; intrusion on seclusion; personal data; physical privacy
 - challenges, 46–9
 - common law jurisdictions, 157–60
 - English common law of privacy, 181–9, 221–3
 - interaction with competing rights, 17–19
 - Princess Caroline case, 10–11, 83–4
 - statutory cause of action, 17, 44–5, 58, 179
 - tort law, 15, 16–17, 160–74
 - versus freedom of speech, 17–19
- private life
 - concept of, 76–8
 - ECHR Art. 8, 10, 11, 76–84, 426–9
 - Princess Caroline case, 10–11, 83–4
 - sexual behaviour, 78–9
 - social aspects, 79–80
- Protection from Harassment Act 1997 (UK), 147, 149–51, 198

Cambridge University Press

978-1-107-04167-7 - Emerging Challenges in Privacy Law: Comparative Perspectives

Edited by Normann Witzleb, David Lindsay, Moira Paterson and Sharon Rodrick

Index

[More information](#)

INDEX

447

- public figures
 - English privacy law, 183–6
 - Leveson Report on press conduct, 189–95, 197–8
- Regulation of Investigatory Powers Act 2000 (UK), 144–5, 146, 147–8, 217–18
- responsibility
 - proposed EU Regulation to emphasise, 68–9
- retention of data
 - Data Retention Directive, 361–2
- right to be forgotten debate, 281–2, 293–6
 - internet intermediaries, 333–7
 - legal case for, 296–9
 - reform proposals, 290–3, 311–31
 - right to erasure distinct from, 306–11
 - right to oblivion distinct from, 302–5
 - social media, 22–3, 312–13, 323–31, 333–7
- security, *see* data security; national security
- sexual behaviour
 - privacy rights, 78–9
- Sexual Offences Act 2003 (UK), 145–6
- Singapore Personal Data Protection Act 2012, 344
- small businesses
 - exemptions from Privacy Act 1988 (Cth), 6, 344
- Snowden, Edward, 1–2
- social aspects of private life, 79–80
- social media
 - anonymity issues, 405
 - household exemption in proposed EU Regulation, 324–6
 - privacy issues, 2–3
 - right to be forgotten debate, 22–3, 312–13, 323–31, 333–7
- Sony PlayStation Network
 - personal data breaches, 6, 36–7
- sports personalities
 - English privacy law, 184–6
 - Leveson Report on press conduct, 189–95, 197–8
 - John Terry case, 423–4
- supervision of data protection
 - proposed EU Regulation to emphasise, 69–70
- surveillance
 - Australian regulation, 19, 208–12
 - interference with right under ECHR Art. 8, 88–9
 - Internet, 283–7
 - media organisations in Australia, the UK and the US, 224–5
 - regulation, 206–7
 - significance in public places, 201–5
 - types, 225–6
 - UK regulation, 19, 217–23
 - unwanted watching and/or visual recording, 145–7, 221–3
 - US regulation, 19, 212–17
- surveillance technologies, 19–20, 204–5, 208–10, 295–6
 - Anti-Social Behaviour Orders (ASBOs), 20
- technology, *see also* surveillance technology
 - privacy-invasive, 1–3, 19–20, 31–2, 204–5, 208–10, 295–6
- telecommunications, *see also* phone calls
 - interception, 87–9, 144–5, 147–8, 156, 208, 217–18
 - privacy-negative initiatives in Australia, 55–6
- Telstra Corporation Ltd
 - investigation, 38–9
- tort law
 - privacy protection, 15, 16–17, 160–74, 410–1
- trespass
 - unwanted access to private space or belongings, 148–9
- United Kingdom
 - anonymity orders, 26, 385–98
 - common law of privacy, 181–9, 221–3, 410–1

United Kingdom (<i>cont.</i>)	online privacy compared with
data breaches, 36–7	Europe, 24, 280–2, 341–3
Human Rights Act 1998 (UK), 3–4,	pressure to comply with Convention
26, 385, 409–10, 413–14, 420–2	108, 137
physical privacy legislation, 143–51	surveillance regulations, 19, 212–17
surveillance regulations, 19, 217–23	Uruguay
United States	accession to Convention 108, 104–5
data breaches, 36	US National Security Agency (NSA)
human rights protection in	Operation PRISM, 1–2
constitution, 3, 4	user control
internet data privacy policy, 277–82	proposed EU Regulation to
issues with interoperability and	enhance, 68
mutual recognition of data	Warren, Samuel D., 31–2, 160–1, 338–9
protection agreements, 133–5	