

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

SOCIAL DIMENSIONS OF PRIVACY

Written by a select international group of leading privacy scholars, *Social Dimensions of Privacy* endorses and develops an innovative approach to privacy. By debating topical privacy cases in their specific research areas, the contributors explore the new privacy-sensitive areas: legal scholars and political theorists discuss the European and American approaches to privacy regulation; sociologists explore new forms of surveillance and privacy on social network sites; and philosophers revisit feminist critiques of privacy, discuss markets in personal data, issues of privacy in health care and democratic politics. The broad interdisciplinary character of the volume will be of interest to readers from a variety of scientific disciplines who are concerned with privacy and data protection issues.

BEATE ROESSLER is Professor of Philosophy at the University of Amsterdam, the Netherlands. She is co-director of the Philosophy and Public Affairs research programme.

DOROTA MOKROSINSKA is a research fellow in political theory at the Goethe University in Frankfurt am Main, Germany, where she is conducting research on the place of privacy in democratic politics.

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

SOCIAL DIMENSIONS OF PRIVACY

Interdisciplinary Perspectives

Edited by

BEATE ROESSLER

AND

DOROTA MOKROSINSKA



Cambridge University Press
978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives
Edited by Beate Roessler and Dorota Mokrosinska
Frontmatter
[More information](#)

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107052376

© Cambridge University Press 2015

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2015

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data

Social dimensions of privacy : interdisciplinary perspectives / edited by Beate Roessler and Dorota Mokrosinska.

pages cm

Includes bibliographical references and index.

ISBN 978-1-107-05237-6 (hbk)

1. Privacy, Right of – Social aspects. I. Roessler, Beate, 1958– editor. II. Mokrosinska, Dorota, 1967– editor.

JC596.S63 2015

323.44'8–dc23

2014049357

ISBN 978-1-107-05237-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

CONTENTS

List of contributors vii
Acknowledgements ix
List of abbreviations x
Table of cases xii
Table of statutes xiv

Introduction 1

DOROTA MOKROSINSKA AND BEATE ROESSLER

PART I **The social dimensions of privacy** 9

1 Privacy: the *longue durée* 11
JAMES B. RULE
2 Coming to terms: the kaleidoscope of privacy and
surveillance 32
GARY T. MARX
3 Privacy and the common good: revisited 50
PRISCILLA M. REGAN
4 The meaning and value of privacy 71
DANIEL J. SOLOVE

PART II **Privacy: practical controversies** 83

5 The feminist critique of privacy: past arguments and
new social understandings 85
JUDITH WAGNER DECEW
6 Privacy in the family 104
BRYCE CLAYTON NEWELL, CHERYL A. METOYER,
ADAM D. MOORE

7	How to do things with personal big biodata	122
	KOEN BRUYNSEELS, JEROEN VAN DEN HOVEN	
8	Should personal data be a tradable good? On the moral limits of markets in privacy	141
	BEATE ROESSLER	
9	Privacy, democracy and freedom of expression	162
	ANNABELLE LEVER	
10	How much privacy for public officials?	181
	DOROTA MOKROSINSKA	
11	Privacy, surveillance, and the democratic potential of the social Web	202
	CHRISTOPHER PARSONS, COLIN J. BENNETT, ADAM MOLNAR	
PART III	Issues in privacy regulation	223
12	The social value of privacy, the value of privacy to society and human rights discourse	225
	KIRSTY HUGHES	
13	Privacy, sociality and the failure of regulation: lessons learned from young Canadians' online experiences	244
	VALERIE STEEVES	
14	Compliance-limited health privacy laws	261
	ANITA L. ALLEN	
15	Respect for context as a benchmark for privacy online: what it is and isn't	278
	HELEN NISSENBAUM	
16	Privacy, technology, and regulation: why one size is unlikely to fit all	303
	ANDREAS BUSCH	
17	The value of privacy federalism	324
	PAUL M. SCHWARTZ	
	<i>Index</i>	347

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

CONTRIBUTORS

ANITA L. ALLEN, Vice Provost for Faculty and Henry R. Silverman Professor of Law and Philosophy, University of Pennsylvania, Philadelphia, PA, USA

COLIN J. BENNETT, Professor at the Department of Political Science, University of Victoria, Victoria, BC, Canada

KOEN BRUYNSEELS, Research Fellow at the Section of Philosophy, Delft University of Technology, Delft, the Netherlands

ANDREAS BUSCH, Professor of Political Science and Chair in Comparative Politics and Political Economy at the Department of Social Sciences, Georg-August-Universität Göttingen, Göttingen, Germany

JUDITH WAGNER DECEW, Professor of Philosophy and Department Chair, Director of Ethics and Public Policy Concentration, Clark University, Worcester, MA, USA

KIRSTY HUGHES, University Lecturer in Public Law, University of Cambridge, Cambridge, United Kingdom

ANNABELLE LEVER, Associate Professor of Normative Political Theory, Department of Political Science and International Relations, University of Geneva, Geneva, Switzerland

GARY T. MARX, Professor Emeritus of Sociology at Massachusetts Institute of Technology (MIT), Cambridge, MA, USA

CHERYL A. METOYER, Associate Professor in American Indian Studies and Associate Dean for Research at the Information School, University of Washington, Seattle, WA, USA

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

viii

LIST OF CONTRIBUTORS

DOROTA MOKROSINSKA, Postdoctoral Research Fellow at the Department of Political Science, Goethe University, Frankfurt am Main, Germany

ADAM MOLNAR, Lecturer at the Department of Criminology, Deakin University, Melbourne, Australia

ADAM D. MOORE, Associate Professor at the Information School, University of Washington, Seattle, WA, USA

BRYCE CLAYTON NEWELL, Research Fellow at the Tech Policy Lab and Ph.D. Candidate at the Information School, University of Washington, Seattle, WA, USA

HELEN NISSENBAUM, Professor, Media, Culture and Communication, Director, Information Law Institute, New York University, New York, NY, USA

CHRISTOPHER PARSONS, Postdoctoral Fellow and Managing Director of the Telecom Transparency Project in the Citizen Lab, Munk School of Global Affairs at the University of Toronto, Toronto, ON, Canada

PRISCILLA M. REGAN, Professor of Government and Politics, School of Policy, Government, and International Affairs, George Mason University, Fairfax, VA, USA

BEATE ROESSLER, Professor of Philosophy at the Philosophy Department, University of Amsterdam, Amsterdam, the Netherlands

JAMES B. RULE, Distinguished Affiliated Scholar in the Center for the Study of Law and Technology, at the Law School, University of California, Berkeley, CA, USA

PAUL M. SCHWARTZ, Jefferson E. Peyser Professor of Law, University of California, Berkeley Law School, Berkeley, CA, USA

DANIEL J. SOLOVE, John Marshall Harlan Research Professor of Law, George Washington University Law School, Washington DC, USA

VALERIE STEEVES, Associate Professor of Criminology at the Faculty of Social Sciences, University of Ottawa, Ottawa, ON, Canada

JEROEN VAN DEN HOVEN, Professor of Philosophy at the Philosophy Section, Delft University of Technology, the Netherlands

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

ACKNOWLEDGEMENTS

We gratefully acknowledge the funding received from the Netherlands Organization for Scientific Research (NWO) for the research project on “Social Dimensions of Privacy” (360-20-240), which provided us with the opportunity to conceive and realize the present volume. We are also very grateful for the support of the Netherlands Institute for Advanced Studies in the Humanities and Social Sciences (NIAS) and the Royal Netherlands Academy for Arts and Sciences (KNAW) for hosting the workshop that brought together many of the contributors to this volume prior to its publication in Wassenaar in January 2014. And we thank the Amsterdam School for Cultural Analysis (ASCA) and the Department of Philosophy at the University of Amsterdam for additional funding for this workshop.

We also want to thank a number of colleagues at the University of Amsterdam: the members of the Amsterdam Platform for Privacy Research and the participants of the Philosophy and Public Affairs Colloquium at the Department of Philosophy. We have benefited enormously from their advice and feedback and we are very grateful for their fruitful collaboration and for their support.

Our very greatest debt of gratitude is, of course, to the authors: for their immensely stimulating contributions, their enthusiasm and their willingness to engage with each other’s ideas, which made this volume possible.

Kim Hughes, our editor at Cambridge University Press, has been extremely supportive and patient throughout and we are very grateful to her. Finally, we would like to express our warm thanks to Marijn Sax and Marjolein Lanzing for their editorial assistance.

Beate Roessler and Dorota Mokrosinska

ABBREVIATIONS

APEC	Asia-Pacific Economic Cooperation
BND	Bundesnachrichtendienst (Germany)
CAN-SPAM	Controlling the Assault of Non-Solicited Pornography and Marketing Act 2003 (USA)
CFR	Charter of Fundamental Rights (EU)
CPBR	Consumer Privacy Bill of Rights (USA)
CNIL	National Commission on Information Technology and Liberties (Commission Nationale des Informatiques et Libertés) (France)
COPPA	Children's Online Privacy Protection Act 2000 (USA)
DHS	Department of Homeland Security (USA)
ECHR	European Convention on Human Rights
EDPB	European Data Protection Board
EU	European Union
FACTA	Fair and Accurate Credit Transactions Act 2003 (USA)
FBI	Federal Bureau of Investigation (USA)
FCRA	Fair Credit Reporting Act 1970 (USA)
FIPPS	fair information practice principles
FTC	Federal Trade Commission (USA)
GCHQ	Government Communications Headquarters (UK)
GLBA	Gramm-Leach-Bliley Act 1999 (USA)
HIPAA	Health Insurance Portability and Accountability Act 1996 (USA)
HITECH Act	Health Information Technology for Economic and Clinical Health Act 2009 (USA)
IRS	Internal Revenue Service (USA)
NSA	National Security Agency (USA)
NTIA	National Telecommunications and Information Administration (USA)
OCR	Office for Civil Rights, Department of Health and Human Services (USA)
OECD	Organisation for Economic Co-operation and Development
PIPEDA	Personal Information Protection and Electronic Documents Act 2001 (Canada)

Cambridge University Press
978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives
Edited by Beate Roessler and Dorota Mokrosinska
Frontmatter
[More information](#)

LIST OF ABBREVIATIONS

xi

RFID	radio frequency identification
SNS	social networking sites/services
SSRC	Social Science Research Council (USA)
STS	science, technology and society
VPPA	Video Privacy Protection Act 1988

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)

TABLE OF CASES

- Armonienė v. Lithuania* (2009) 48 EHRR 53 231
- Avilkina v. Russia* (Application No. 1585/09) June 6 2013, available on HUDOC 233
- Bagent v. Blessing Care Corp.*, 844 NE 2d 469 (Ill. Ct. App. 2007) 270
- Brunet v. France*, No. 21010/10, ECHR 2014 336
- Buckley v. Valeo* (1976) 424 US 1 61
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 65, 1, 43 (1983) 341
- Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court] Entscheidungen des Bundesverfassungsgerichts [BVerfGE] 120, 274 Online-Durchsuchung [Online-Searches] (2008) 341
- Commission v. Germany*, C-518/07 March 9 2010 336
- Copland v. the United Kingdom*, No. 62617/00, ECHR 2007 336
- Citizens United v. FEC* (2010) 558 US 61, 62
- DeMay v. Roberts*, 46 Mich. 160, 9 NW 146 (Mi 1881) 269
- Doe v. Young*, 664 F. 3d 727 (8th Cir. 2011) 267
- Eweida v. United Kingdom* (2013) 57 EHRR 8 232
- Ex Parte Jackson*, 96 US 727, 733 (1877) 76
- Federal Trade Commission, Plaintiff v. Wyndham Worldwide Corporation et al., Defendants*. 2:13-cv-01887-ES-JAD. US District Court, District of New Jersey. April 7 2014 279
- Gillan and Quinton v. United Kingdom* (2010) 50 EHRR 45 234, 235, 236
- Google v. Gonzalez*, C-131/12 May 13, 2014 336
- Google Inc. v. Joffe et al.* 13 1181. US Supreme Court. June 30 2014 279
- Handyside v. United Kingdom* (1976) 1 EHRR 737 232
- Hines v. Davidowitz*, 312 US 52, 67 (1941) 328
- Ireland v. Parliament and Council*, C-301/06 February 10 2009 336
- Katz v. United States*, 389 US 347 (1967) 294, 295
- Kennedy v. United Kingdom* (2011) 52 EHRR 4 234
- Klaas and Others v. Germany* (1978) 2 EHRR 214 234, 236
- Knight v. Penobscot Bay Medical Center*, 420 A.2d 915 (Me. 1980) 269, 270
- Kudrevicius v. Lithuania* (Application No. 37553/05) November 26 2013, available on HUDOC 232

TABLE OF CASES

xiii

<i>Kyllo v. US</i> (2001) 533 US 27	60
<i>Liberty v. United Kingdom</i> (2009) 48 EHRR 1	236
<i>Lillo-Stenberg and Saether v. Norway</i> (Application No. 13258/09) January 16 2014, available on HUDOC	238
<i>Lindqvist</i> , C-101/01 November 6 2003	336
<i>Malone v. United Kingdom</i> (1985) 7 EHRR 14	234, 236, 241
<i>Maximillian Schrems v. Data Protection Comm'r</i> [2013] 33, No. 765 JR H. Ct. (Ir.)	336
<i>McCutcheon v. FEC</i> (2013) 572 US	61
<i>Michaud v. France</i> (2014) 59 EHRR 9	233
<i>Mosley v. United Kingdom</i> (2011) 53 EHRR 30	231
<i>Olmstead v. United States</i> , 277 US 438 (1928)	294, 305
<i>P.G. and J.H. v. the United Kingdom</i> , No. 44787/98, ECHR 2001	336
<i>Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n</i> , 461 US 190, 212–13 (1983)	328
<i>Peruzzo and Martens v. Germany</i> , Nos. 7841/08 and 57900/12, ECHR 2013	336
<i>Pisk-Piskowski v. Poland</i> , No. 22807/07, ECHR 2005	336
<i>Re: Netflix Privacy Litigation</i> . No. 11–00379 US District Court, Northern District of California. July 6 2012	279
<i>Ruusunen v. Finland</i> (Application No. 73579/10) January 14 2014, available on HUDOC	238
<i>S and Marper v. United Kingdom</i> (2009) 48 EHRR 50	234, 236, 241
<i>Smith v. City of Artesia</i> , 772 P.2d 373, 376 (N.M. Ct. App. 1989)	78
<i>Taylor-Sabori v. the United Kingdom</i> , No. 47114/99, ECHR 2002	336
<i>United States v. Jones</i> (132 S. Ct. 945 2012)	60, 61
<i>United States v. Maynard</i> (615 F.3d 544 2010)	61
<i>US v. Knotts</i> (1983) 460 US 276	60
<i>US v. Karo</i> (1984) 468 US 705	60
<i>Uzun v. Germany</i> (2011) 53 EHRR 24	234, 235
<i>Von Hannover v. Germany</i> (2005) 40 EHRR 1	232, 237, 239, 241
<i>Von Hannover v. Germany</i> (No. 2) (2012) 55 EHRR 15	237, 238, 239, 241
<i>Yath v. Fairview Clinics</i> , 767 N.W. 2d 34 (Minn. Ct. App. 2009)	270

TABLE OF STATUTES

Cable Communications Policy Act 1984, 47 USC § 555(d)(2) (USA) 329, 330, 332

Charter of Fundamental Rights of the European Union, OJ (2010/C/83/389) March 30

Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act 2003, 15 USC §§ 7701–7713 (USA) 332

Children’s Online Privacy Protection Act, 15 USC §§ 6501–6506 (2000) (USA) 104, 330, 332

Data Protection Directive 1995 95/46/EC (EU) 144, 209, 317, 318, 324, 335

Fair and Accurate Credit Transactions Act (FACTA) 2003 15 USC § 1601(USA) 284, 329, 332

Fair Credit Reporting Act 1970, 15 USC § 1681a(d) (2000 & Supp. V 2005) (USA) 284, 326, 329, 332

Federal Data Protection Act 1977 [Gesetz zum Schutz vor Mißbrauch personenbezogener Daten bei der Datenverarbeitung (Bundesdatenschutzgesetz)], ch. 1, 201 (Germany) 325, 326

Genetic Information Nondiscrimination Act 2010, 42 USC §§ 2000ff *et seq.* (USA) 262

Gramm-Leach-Bliley Act (GLBA) 1999, 15 USC § 6807[a] (USA) 284, 326, 330, 331, 332

Health Insurance Portability and Accountability Act (HIPAA) of 1996, 29 USC § 1144 (2006) (USA) 123, 262, 267, 270, 284, 330, 331, 332

Health Information Technology for Economic and Clinical Health (HITECH) Act 2009, 42 USC § 17902 (2009) (USA) 327

Interception and disclosure of wire, oral, or electronic communications prohibited 18 USC § 2511(2)(a)(i) (USA) 295, 298, 299

Law on Information Technology, Data Files and Civil Liberties 1978[loi 78–17 du 6 Janvier 1978 de l’informatique et libertés] (France) 325

National Prohibition Act 1919, Pub L. No. 66–66 41 Stat. 305 (USA) 305

Omnibus Crime Control and Safe Streets Act 1968, 42 USC § 3711 (USA) 305

Patriot Act 2001, Pub. L. No. 107–56 115 Stat. 272 (USA) 18, 29

Personal Information Protection and Electronic Documents Act (PIPEDA) 2001 (Canada) 245, 246, 247, 256

Prevention of Terrorism Act 2005 (UK) 310

Cambridge University Press
978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives
Edited by Beate Roessler and Dorota Mokrosinska
Frontmatter
[More information](#)

TABLE OF STATUTES XV

Privacy Act 1974, 5 USC § 552a (USA) 28, 328
Real ID Act 2005, 49 USC § 30301 note (USA) 309
Telecommunications Act of 2004 [Telekommunikationsgesetz], § 91–107
(Germany) 326
Telephone Consumer Protection Act 1991, 18 USC § 2710 (USA) 332
Treaty of Lisbon 2007, O.J. [C 306], 2007 335, 336, 344
Vermont Admin. Code 4–3-42:2 (2014) (USA) 331
Video Privacy Protection Act 1988 (USA) 326, 329, 330

Cambridge University Press

978-1-107-05237-6 - Social Dimensions of Privacy: Interdisciplinary Perspectives

Edited by Beate Roessler and Dorota Mokrosinska

Frontmatter

[More information](#)
